

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Elections Commission

Regular Meeting
Tuesday, March 2, 2021
10:30 A.M.

Due to the COVID-19 pandemic, this meeting is being held via video teleconference only. Members of the public and media may attend online or by telephone. Please visit <https://elections.wi.gov/node/7339> for login/call-in information. All public participants' phones/microphones will be muted during the meeting. Members of the public wishing to speak before the Commission should email electioncomments@wi.gov with "Message to Commissioners" in the subject line by the day before the meeting.

AGENDA

- A. Call to Order**
- B. Administrator's Report of Appropriate Meeting Notice**
- C. Minutes of Previous Meetings**
 - 1. February 3, 2021** **3**
- D. Personal Appearances (Time reserved for personal appearances may be limited by the Chair)**
- E. Consideration of Adoption of Special Voting Deputy Guidance for the April 6, 2021 Election and Analysis of Administrative Rule Process** **8**
 - 1. Special Voting Deputy Explainer** **19**
 - 2. Draft Clerk Guidance Document** **29**
- F. Status Report on Electronic Voting Equipment Audit** **34**
- G. Consideration of Adoption of Plan for Electronic Registration Information Center- 2021 Movers Mailer** **47**
- H. Staff Update** **55**
- I. Consideration of Updates to Commission's Legislative Agenda** **76**

NOTICE OF OPEN AND CLOSED MEETING

J. Closed Session

- 1. Election Complaints – Wis. Stat. § 5.05**
- 2. Litigation Update**

§19.851 – The Commission’s discussions concerning violations of election law shall be in closed session.

§19.85(1)(g) – The Commission may confer with legal counsel concerning litigation strategy.

K. Adjourn



Wisconsin Elections Commission

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Wisconsin Elections Commission

Regular Meeting

212 E. Washington Avenue, Third Floor
Madison, Wisconsin
9:00 a.m. February 3, 2021

Open Session Minutes

Present: Commissioner Ann Jacobs, Commissioner Marge Bostelmann, Commissioner Julie Glancey, Commissioner Dean Knudson, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Meagan Wolfe, Richard Rydecki, Sharrie Hauge, Robert Kehoe, Nathan Judnic, James Witecha, and Reid Magney

A. Call to Order

Commission Chair Ann Jacobs called the meeting to order at 9:04 a.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commissioners that proper notice was given for the meeting.

C. Personal Appearances

Annette Kuglitch appeared and read a resolution passed by the Wisconsin Assembly regarding election legislation that members plan to make a priority in the current session.

Commissioners Thomsen, Spindell and Knudson discussed the Assembly resolution.

Debbie Morin appeared and discussed election administration procedures she does not believe were consistently applied during the election.

Barbara Beckert of Disability Vote Coalition appeared and discussed voting accessibility, SVD Voting, and the increased numbers of indefinitely confined voters in 2020.

Kyle Kleist of the Center for Independent Living Western Wisconsin appeared to discuss voting accessibility and issues in rural areas and compliance with the Americans with Disabilities Act.

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

C. Personal Appearances (continued)

Denise Jess of the Wisconsin Council for the Blind and Visually Impaired appeared to discuss voting accessibility and the need for an accessible absentee ballot, such as Braille or large print.

Liz Morrell, of The Arc of Fond du Lac appeared to discuss voting accessibility and the importance of absentee voting for individuals with intellectual disabilities.

D. Report on November 2020 Election Data

Administrator Wolfe made a presentation based on the November 2020 Election Data Report, starting on page 2 of the February 3 commission meeting materials. She discussed election turnout, list maintenance by clerks prior to the election, Election Day Registrations, the popularity of the MyVote Wisconsin website, absentee ballots and ballot tracking, the high number of contacts from voters the WEC staff handled, low rejection rates for absentee ballots, and the high percentage of indefinitely confined absentee voters who have previously provided acceptable photo identification. She discussed the importance of the transparency of data in elections so the public can engage with the truth.

Commissioners and staff discussed details of the report, including the importance of federal CARES act funding, voter list maintenance, registration list alerts, post-election fraud audits, special voting deputies for nursing home residents, indefinitely confined absentee voters, and voters who have been adjudicated as incompetent.

Chair Jacobs called for a recess at 11:30 a.m. The Commission meeting resumed at 11:41 a.m.

Commissioners further discussed the special voting deputy procedures.

E. Report on ERIC Movers List Status

Administrator Wolfe made a presentation based on a memorandum starting on page 32 of the February 3 commission meeting materials regarding the Election Registration Information Center (ERIC) Movers List Update. She reviewed the process the Commission adopted for the 2019 ERIC Movers Mailing, as well as the statistics for how many registered voters affirmed their current address, reregistered at the same or a new address, or have not voted. She discussed procedures staff is developing for future mailings, including doing them more frequently. Once the Wisconsin Supreme Court has ruled in the current case, staff will return to the Commission with language for the mailer.

Commissioners and staff discussed the report and plans for future mailings.

MOTION: Institute the 2021 ERIC Movers Mailing quarterly with a fresh data match, information about how the voter would correct it, continue to use poll book watermarks for voters on the list until the 2022 Spring Election, and direct staff to work on the details so the Commission can approve them at its next meeting. Moved by Commissioner Knudson, seconded by Commissioner Bostelmann.

Discussion. Administrator Wolfe said staff is already working on plans which will come to the Commission at its March meeting if it is ready. Commissioner Knudson withdrew his motion.

Chair Jacobs called for a recess at 1:21 p.m. The Commission meeting resumed at 1:51 p.m.

F. Report on WEC September 2020 Informational Mailer

Administrator Wolfe made a presentation based a report starting on page 38 of the February 3 commission meeting materials regarding the Commission’s mailing to 2.6 million registered voters about their voting options

for November 2020. The mailing resulted in 40,686 mailed absentee ballot applications that were approved by the clerk’s office, which then issued an absentee ballot, resulting in 37,481 returned and counted absentee ballots. It also resulted in a large but unknown number of absentee ballot requests and re-registrations through the MyVote Wisconsin website. She also discussed the process for notifying clerks of any undeliverable mailers.

Commissioners and staff discussed issues with mailing addresses and delivery which may have resulted in undeliverable mailings.

G. Final Report on 2020 Voting Equipment Audit

Elections Specialists Robert Williams and Cody Davies made a presentation based on a report starting on page 38 of the February 3 commission meeting materials regarding the Commission’s 2020 voting equipment audit. More than 145,000 ballots from randomly selected reporting units in every county were hand recounted. The audit found no evidence that any voting equipment subject to audit and used in the 2020 General Election in Wisconsin changed votes from one candidate to another, incorrectly tabulated votes, or altered vote totals in any way. The concerns identified in the report do not represent programming errors, unauthorized alterations or “hacking” of voting equipment software or malfunctions of voting equipment that altered the outcome of any races on the ballot. They do, however, highlight the limitations of electronic voting equipment and underscore the necessity of comprehensive administrative procedures required to ensure the effectiveness of voting equipment used in Wisconsin elections.

Commissioners and staff discussed issues with Dominion Voting Systems ICE scanners recording overvotes when they mistakenly read a crease mark in some ballots as write-in votes. Dominion has addressed the problem with an update to its software for future elections.

MOTION 1: Accept the final report of the 2020 Post-Election Voting Equipment Audit.

MOTION 2: Amend the certification of Dominion Voting Systems’ Democracy Suite 4.14 to establish the target area of the ballot as only the oval filled in by voters, thereby removing the write-in field as part of the area scanned for marks for the April 6, 2021, Spring Election. Direct staff to provide training for clerks for the April 6, 2021, Spring Election.

Both motions moved by Commissioner Thomsen and seconded by Commissioner Glancey.

Commissioner Glancey offered a friendly amendment directing jurisdictions using the Dominion ICE system to supply the Commission with the number of overvoted ballots that were counted. Commissioner Thomsen accepted the amendment. Commissioner Spindell asked for a presentation by a representative of Dominion at the Commission’s next meeting, which Commissioner Thomsen also accepted as a friendly amendment to his motion.

Chair Jacobs restated the motion and called the question.

Roll call vote:	Bostelmann:	Aye	Glancey:	Aye
	Jacobs:	Aye	Knudson:	Aye
	Spindell:	Aye	Thomsen:	Aye

Motion carried unanimously.

G. Final Report on 2020 Voting Equipment Audit (continued)

MOTION: Direct staff to order clerks to complete a hand-count audit of ballots cast in the November 2020 General Election using Dominion voting equipment, to be conducted after the 2021 Spring Election in April. Moved by Commissioner Knudson, seconded by Commissioner Spindell.

Commissioners and staff discussed whether to order an audit now or wait to see whether the overvote reports indicate a wider problem.

Roll call vote:	Bostelmann:	No	Glancey:	No
	Jacobs:	No	Knudson:	Aye
	Spindell:	Aye	Thomsen:	No

Motion failed 4-2.

MOTION: Direct clerks who use Dominion Voting Equipment to provide the Commission with reports of all overvotes in the November 2020 General Election and to secure all ballots from that election. Following receipt of reports, the Commission will determine whether further steps are necessary and use the information to determine whether there is need for a full audit of all the equipment. Moved by Commissioner Bostelmann, seconded by Commissioner Glancey.

Roll call vote:	Bostelmann:	Aye	Glancey:	Aye
	Jacobs:	Aye	Knudson:	Aye
	Spindell:	Aye	Thomsen:	Aye

Motion carried unanimously.

H. Commission 2021 Meeting Schedule

Administrator Wolfe and Commissioners discussed a memorandum on page 74 of the February 2 meeting materials regarding possible dates for future Commission meetings in 2021 and early 2022.

MOTION: Approve the meeting schedule of March 2, 2021 at 10:30 a.m. in Quarter 1, June 2, 2021 at 9:00 a.m. in Quarter 2, September 9, 2021 at 9:00 a.m. in Quarter 3, December 1, 2021 at 9:00 a.m. in Quarter 4. The Commission further confirms the statutorily required meeting to consider challenges and ballot access of January 11, 2022 at 9:00 a.m. Moved by Commissioner Bostelmann, seconded by Commissioner Knudson.

Roll call vote:	Bostelmann:	Aye	Glancey:	Aye
	Jacobs:	Aye	Knudson:	Aye
	Spindell:	Aye	Thomsen:	Aye

Motion carried unanimously.

I. Approval of Minutes from Previous Meeting

MOTION: Approve the minutes of the January 12 and January 15, 2021, open session meeting. Moved by Commissioner Knudson, seconded by Commissioner Bostelmann.

Roll call vote: Bostelmann: Aye Glancey: Aye
 Jacobs: Aye Knudson: Aye
 Spindell: Aye Thomsen: Aye

Motion carried unanimously.

J. Closed Session

MOTION: Adjourn to closed session for the purpose of discussing election complaints under Wis. Stat. § 5.05 and conferring with legal counsel concerning litigation strategy. Moved by Commissioner Bostelmann, seconded by Commissioner Knudson.

Roll call vote: Bostelmann: Aye Glancey: Aye
 Jacobs: Aye Knudson: Aye
 Spindell: Aye Thomsen: Aye

Motion carried unanimously.

The Commission recessed at 4:16 p.m. and convened in closed session at 4:37 p.m. The closed session meeting adjourned at 6:58 p.m.

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The next regular meeting of the Wisconsin Elections Commission is scheduled for Tuesday, March 2, 2021, by teleconference, beginning at 10:30 a.m.

February 3, 2021 Wisconsin Elections Commission meeting minutes prepared by:

Reid Magney, Public Information Officer

February 22, 2021

February 3, 2021 Wisconsin Elections Commission meeting minutes certified by:

Marge Bostelmann, Commission Secretary

March 2, 2021



Wisconsin Elections Commission

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DATE: For the March 2, 2021 Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Megan Wolfe, Administrator

SUBJECT: Nursing Home and Care Facility Voting for the April 6, 2021 Spring Election

This memorandum is provided by WEC staff to the Commission, as directed, to outline the following:

- 1) Background on the Special Voting Deputy (SVD) process and the procedures used in 2020 and 2021
- 2) Analysis of the administrative rule process related to SVDs
- 3) Public health guidance and items for consideration specific to the April 6, 2021 Spring Election
- 4) Status update on the development of a plan for future scenarios where SVDs are denied access to care facilities

Ultimately, through the memo WEC staff seek the Commission's direction on the approach to the administrative rule making process, guidance for clerks related to SVD voting for the April 6, 2021 election, and the future state of the SVD process in the event that SVDs are denied access to a facility.

1. Background and Prior Guidance

The Commission first discussed nursing home and care facility voting in relation to the COVID-19 pandemic prior to the April 7, 2020 Presidential Preference Vote and Spring Election during their meeting on March 12, 2020. At the meeting Commissioners determined that under Emergency Order #72 issued by Governor Evers and directives of the Department of Health Services (DHS), voting with special voting deputies could not take place for the Spring Election. Clerks were instead instructed to mail absentee ballots to voters in those facilities with an absentee ballot request on file.¹

The Commission revisited this guidance prior to both the August Partisan Primary and November General Election and, on both occasions, did not alter the basic elements of this guidance. On June 24, 2020, the Commission passed a motion that acknowledged the Governor's public health order was no longer in effect, but also determined access to care facilities and nursing homes would be difficult, if not impossible, due to COVID-19 related concerns about the vulnerability of residents. In making this decision the Commission considered

¹ At its meeting of March 12, 2020, the Wisconsin Elections Commission passed the following motion: In light of Executive Order #72 and directives of the Department of Health Services, the Commission finds that Special Voting Deputies are "non-essential" individuals who are not permitted to enter nursing homes and other care facilities without completing a screening process that is not feasible to implement prior to the Spring Election and Presidential Primary. For that election and the May 12, 2020 Special Election in the 7th Congressional District, the Commission directs that municipalities shall not use the Special Voting Deputy process to serve residents in care facilities and instead shall transmit absentee ballots to those voters by mail.

Wisconsin Elections Commissioners

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Administrator
Megan Wolfe

information from state and federal agencies that regulate nursing homes and care facilities that non-essential visitors to these facilities, such as SVDs, should be restricted. The Commission's decision on all occasions was based not only on the restriction on SVDs entering facilities as visitors, but also because when SVDs are present, observers are also statutorily required to be present. In consultation with public health officials, not only would facilities refuse entry to SVDs, but observers would be refused as well.

In order to ensure that residents of facilities normally served by SVDs would have timely access to their ballot, the Commission instructed clerks not to wait for SVDs to make two attempts to visit facilities that were sure to fail, but to send ballots directly to these residents. This approach would allow these residents additional time to receive, vote and return their ballot in time to be counted, being that any potential visits by SVDs could not be scheduled. The guidance to proceed with the immediate mailing of ballots was based on Wis Stats §6.875(6)(e) which states "If a qualified elector is not able to cast his or her ballot on 2 separate visits by the deputies to the home or facility, the deputies shall so inform the municipal clerk or executive director of the board of election commissioners, who may then send the ballot to the elector no later than 5 p.m. on the Friday preceding the election."

State health service administrators, including the Division of Quality Assurance (DQA), which provides guidance to care facilities for licensing/certification, indicated throughout 2020 and early 2021 that all facilities, both public and private, had limited visitors to essential personnel only. WEC staff also requested information on safety precautions SVDs could take that would increase the likelihood that they would be admitted; however, staff were informed there were no precautions that could be taken ensure SVD access as they were considered non-essential personnel. This meant that not only were SVDs and observers going to be denied access if they attempted to make a visit, but clerk requests to coordinate, schedule and notice a visit in a care facility would be denied.

The Commission directed staff to revisit the possibility of sending SVDs to qualified care facilities and nursing homes prior to the 2020 November General Election and this issue was discussed during a public meeting on September 16, 2020. In preparation for this meeting staff met with public health officials, care facility and nursing home regulatory officials, and an epidemiologist. WEC staff outlined the procedures required for SVD visits, and DHS representatives provided an updated overview of COVID-19 activity across the state and facility visitation policies.

These conversations identified significant challenges with potential SVD voting prior to the November General Election and public health officials outlined what potential safe visits could look like while also acknowledging that most, if not all, qualified facilities were not accepting visitors at that time. The memo prepared for the Commission meeting concluded, "Even if the program were reinstated, it is probable that SVD voting would not be available at qualified facilities and that lack of uniformity would create training and messaging complications for voters who reside in those facilities, interested family members and facility staff." Staff reached this conclusion in consideration of the information provided by state public health officials, care facility and nursing home regulatory officials, and advocates for the aging and disability communities who provided feedback to the Commission. Advocates emphasized the importance of uniformity across jurisdictions for SVD voting. The Commission ultimately did not amend its previous guidance to local election officials who were instructed to mail ballots to voters in care facilities as provided for in statute when residents are unable to vote with an SVD on two separate occasions.

The Commission reconsidered this guidance prior to the 2021 Spring Primary during a public meeting on January 15, 2021 but did not make any changes to it, ultimately moving that because the two SVD visits would be denied by care facilities, that clerks should proceed directly to Wis. Stat. §6.875(6)(e) which requires that the ballots be sent to the voters. Waiting to send the ballots, and attempting two visits which would be denied, would make it impossible in some circumstances for voters to receive their ballots and return them in time to be counted.

State statutes were also considered as part of each of the Commission's deliberations including Wis. Stat. §6.875(6)(a) which provides the timeline for SVD visits and states, "The time may be no earlier than the 4th Monday preceding the election and no later than 5 p.m. on the Monday preceding the election." The USPS says that ballots can take up to one week to be mailed from the clerk's office to the voter and an additional week to be returned from the voter back to the clerk for a total of not less than 14 days needed to ensure a voter in a care facility is able to receive and return their ballot. If clerks were to wait to mail ballots to care facilities where SVDs were twice denied entry within the statutory timeframe, many SVD voters would have less than 14 days to receive and return their ballots to be counted.

Arguably, care facilities cannot deny SVD access without a valid reason (*See* Wis. Stat. § 6.875 for direction on the treatment of a home or facility as a polling place). That said, there are no federal or state laws that would give SVDs or a clerk's office authority to access a facility that denies access based on state or federal public health guidance or for any other legitimate reasons. Prior to the COVID-19 pandemic, it was not uncommon for a care facility to deny SVD access because of a quarantine or because of other legitimate concerns the facility had over SVDs or observers being allowed on the premises. Historically, in any instance where a care facility alerted a clerk that SVD access would be denied, the clerk proceeded to fulfill their obligation to provide voters a ballot by mailing it as required by Wis. Stat. §6.875(6)(e). Federal law says care facilities cannot deny residents the option to participate in an election, absent an adjudication of the right to vote, but there is no requirement that SVDs facilitate voting in care facilities and allowing residents to participate by mail fulfills the federal access requirements.

2. Administrative Rules and Special Voting Deputies (SVD)

a. Background

On February 11, 2021, the Joint Committee for the Review of Administrative Rules ("Committee") convened an executive session to discuss the Commission's recent decisions and subsequent guidance on Special Voting Deputies. The Committee passed the following motion requiring the Commission to show statutory authority for its directive relating to SVDs and promulgate it as an emergency rule or cease issuing such directives to clerks:

Moved, that, pursuant to s. 227.26 (2) (b), Stats., the Joint Committee for Review of Administrative Rules determines that the directive of the Wisconsin Elections Commission that clerks should proceed directly to mailing absentee ballots to voters who reside in care facilities, and that special voting deputies will not be dispatched to care facilities, most recently approved at the Commission's January 15, 2021, meeting, meets the definition of a rule under s. 227.01 (13), Stats., and directs the agency to promulgate the directive as an emergency rule within 30 days.

Following the Committee's executive session, the Co-Chairs sent the Commission a letter outlining its action and provided an opinion prepared by Legislative Council on this topic.

The Legislative Council opinion states that state law does not empower the Commission to waive the requirement for clerks to dispatch SVDs to qualifying care facilities, nor does it contain an exemption for clerks based on the pandemic. The opinion further states that state law does not permit clerks to mail absentee ballots to care facility residents prior to sending SVDs on two separate visits. Only after SVDs make two visits to a care facility are clerks permitted to mail ballots to residents.

Per Wis. Stat. § 227.26(2)(b), the Committee has directed the Commission to promulgate an emergency rule no later than March 13, 2021 or cease providing its current direction to clerks relating to SVDs and absentee voting at care facilities. The Committee states that if the WEC cannot show statutory authority to promulgate an emergency rule on this topic, it would be prohibited from advancing an emergency rule or continuing with its recent SVD guidance.

b. Emergency Administrative Rules Process

Wisconsin Statute § 227.24 provides the procedure for promulgating an emergency rule, which omits some of the requirements required in promulgating a permanent administrative rule. In most emergency rule scenarios, the agency promulgating the rule must provide a basis for the emergency – generally statements showing that the rule must be promulgated on an emergency basis to preserve the public peace, health, safety or welfare. However, when the Committee directs an agency to promulgate an emergency rule under Wis. Stat. § 227.26(2)(b) within 30 days of the Committee’s action, the rule is not required to contain a finding of emergency. Wis. Stat. § 227.24 (3). In theory, the Commission could also retake control of this process, make an emergency finding, and begin implementing the requirements of an emergency rule promulgation under Wis. Stat. § 227.24 on its own (*i.e.* separate from the order of the Committee). The only real difference being that this would allow the Commission to regain perceived ownership over the initiation of the process, while also submitting supportive materials that refute the findings of Legislative Council in accordance with the discussion below, and provide a narrative on why the Commission enacted the directives in the first place.

To promulgate an emergency rule, the agency must first prepare a statement of scope for the proposed rule, submit the statement of scope to the Department of Administration (“explicit authority” review), which then passes it on to the Governor for approval. Once approved, the statement of scope is then submitted to the Legislative Reference Bureau and published in the administrative register. Once published, the statement of scope is then approved by the governing body of the agency, but not earlier than 10 days after it has been published in the administrative register. After final approval of the statement of scope by the governing body, the rulemaking order is then drafted by the agency. As part of the order, a fiscal estimate must also be prepared and included with the rule. The proposed emergency rule in final draft form is then submitted to the Governor for approval. The agency may not publish the emergency rule or file a certified copy of the rule with the Legislative Reference Bureau until the Governor approves the emergency rule in writing. After approval by the Governor, the emergency rule is published in the official state newspaper. The emergency rule takes effect upon publication in the newspaper or a later date specified in the rule. A certified copy of the emergency rule and fiscal estimate must then also be filed with the Legislative Reference Bureau which in turn publishes it in the administrative register along with information about the duration of the rule and the code chapters effected, the relating clause of the rule and a link to the promulgation history. Once adopted, the agency must then also mail or email a copy of the rule and fiscal estimate to each member of the Legislature and to the Chief Clerk of each house of the Legislature. The agency then takes steps to notify individuals who may be impacted about the rule being in effect. The agency is then required to hold a public hearing on the emergency rule within 45 days after the adoption of the rule after providing appropriate notice. Emergency rules are in effect for 150 days, with the opportunity for extension by request and approval of the Committee.

c. Discussion

Ultimately, the Commission must decide whether to direct staff to promulgate an emergency rule consistent with the guidance most recently provided for the 2021 Spring Primary, OR decide not to re-issue the guidance which would result in clerks attempting to send SVDs to care facilities for the 2021 Spring Election.

For several reasons, Commission staff do not believe pursuing an emergency rule on this topic is a viable option and would recommend not issuing the same type of guidance to clerks for the 2021 Spring Election on SVDs that has been previously provided.

First, some public health guidance and admittance policies at care facilities related to the COVID-19 pandemic have changed, which could allow some SVDs (visitors) in some locations across the state to conduct voting for residents if they take precautions and follow appropriate safety protocols. With the incremental changes to visitor policies on the horizon, an emergency rule at this point extended past guidance does not seem necessary or appropriate.

Second, regardless of the statutory authority cited, justifications provided or arguments made in support of the Commission's previous guidance outlined as part of an emergency rule order, it would seem apparent that the Committee will rely on the Legislative Council opinion and strike down any emergency rule that is promulgated in this area. The opinion focuses solely on the language of the statute that requires SVDs to be sent on two occasions and there is no doubt that is what the statute says – but it fails to acknowledge some of the legal impossibilities that clerks would have faced had they attempted to send SVDs to care facilities when they were not permitted to enter. For example, Wis. Stat. § 6.875(6) requires clerks to post a notice at least five days in advance of the SVD's visits and it requires coordination between the clerk and the facility to make these visits happen. The opinion assumes that care facilities are going to make exceptions to their visitor policies and allow clerks to post notices and allow SVDs to conduct voting during a pandemic, where it is clear that if COVID-19 gets into a facility, the results can be deadly. Especially when residents can vote absentee by mail without being exposed to strangers. All that being said, it seems futile, and a waste of resources at all levels of the process (Commission, DOA, Governor's Office, Legislative Reference Bureau) to pursue the promulgation of a rule when it is clear that the rule outlining this procedure will ultimately fail.

Third, the statute does not provide a clear process for clerks to follow when SVDs are unable to make visits to a care facility, whether there is a global pandemic, a localized outbreak at a single location that requires a quarantine of residents or some other issue that would make it impossible for SVDs to complete the required visits. Therefore, legislative changes to add language to address this contingency may be the best option so that the Legislature can express its preference on how clerks are to handle this situation in the future. The Commission could consider adding this item to its legislative agenda for this session.

3. Proposed Plan for Special Voting Deputies for the 2021 Spring Election

Based on the statutory interpretation provided to the Joint Committee for the Review of Administrative Rules by Legislative Council, the Commission does not have the authority to issue guidance to clerks which allows them to proceed to mailing ballots to care facility residents without first making two visits to those facilities, regardless of the availability of those facilities to receive visitors. This opinion implies an inherent right to access by SVDs to these facilities and cites federal guidelines that govern nursing homes while stating its case. This guidance will be discussed further in this memo, but it is important to note that it only covers nursing homes who receive federal Medicare and Medicaid funding and does not directly apply to other care facilities required by state law to be served by SVDs. Wis. Stat. §6.875(1)(bm) defines "Residential Care Facilities" that

are required to be served by SVDs as community-based residential facilities, adult family homes and residential care apartment complexes, in addition to nursing homes.

In addition, the Legislative Council opinion neglects to acknowledge that a certain degree of coordination between the clerk, SVDs and the care facility served by SVDs is required by state law in order to facilitate voting visits. Specifically, Wis. Stats. 6.875(6)(a) states, in part, the SVDs are to “arrange one or more convenient times with the administrator of each qualified retirement home and residential care facility in the municipality that the deputies are scheduled to visit,” and the “municipal clerk also shall post a notice at the home or facility and on the Internet indicating the date and time that absentee voting will take place at that home or facility.” Legislative Council states there is “no legal obstacle to clerks dispatching SVDs as required,” but fails to address what happens if a municipal clerk does not have the cooperation of the care facility administrator in arranging visits or accessing the facility to post the statutorily required public meeting notice prior to the SVD visits. This opinion also cites federal guidance in making this presumption of access to facilities served by SVDs, but that guidance clearly identified situations where countywide COVID-19 rates would preclude any visits, outside of those for compassionate care purposes.

If the Commission adjusts its guidance to account for the inflexibility in administering this statute outlined by Legislative Council, municipal clerks will be left to navigate these situations without the benefit of uniform guidance. Municipal clerks will have to determine what constitutes a visit and may have to plan for these visits without the benefit of coordination with the facility. Based on the analysis provided by staff on the potential success of promulgating the emergency administrative rule, it is recommended that the Commission should provide guidance to clerks which states they must attempt the two required SVD visits prior to mailing ballots to care facility residents. The success of the visits will be determined, in part, by access to the facilities in question.

Access to care facilities by SVDs may not prove to be universal across the state, but there are some federal guidelines that provide guidance for visits at nursing homes during the ongoing pandemic. The latest version of this guidance was issued by the Centers for Medicare and Medicaid Services (CMS) on September 17, 2020 and applies to skilled nursing home facilities that utilize federal funding (QSO-20-39-NH). It provides an outline for visitation procedures that are outside of the compassionate care situations previously allowed under CMS guidance and identifies a set of core principles for facilities to utilize to limit COVID-19 infection. The core principles identified by CMS are as follows:

- Screening of all who enter the facility for signs and symptoms of COVID-19 (e.g., temperature checks, questions or observations about signs or symptoms), and denial of entry of those with signs or symptoms
- Hand hygiene (use of alcohol-based hand rub is preferred)
- Face covering or mask (covering mouth and nose)
- Social distancing at least six feet between persons
- Instructional signage throughout the facility and proper visitor education on COVID19 signs and symptoms, infection control precautions, other applicable facility practices (e.g., use of face covering or mask, specified entries, exits and routes to designated areas, hand hygiene)
- Cleaning and disinfecting high frequency touched surfaces in the facility often, and designated visitation areas after each visit
- Appropriate staff use of Personal Protective Equipment (PPE)
- Effective co-horting of residents (e.g., separate areas dedicated COVID-19 care)
- Resident and staff testing conducted as required at 42 CFR 483.80(h) (see QSO-20-38-NH)

In addition, CMS has identified additional conditions for indoor visits including no new onset of COVID-19 cases for 14 days, the ability for visitors to adhere to the core principles, limits of one visitor per-resident and a cap on the total number of visitors in the facility at one time, and a limit on the movement of visitors once inside the facility. Facilities are required to use the COVID-19 county positivity rate, found on the COVID-19 Nursing Home Data site, as additional information to determine how to facilitate indoor visitation. The CMS guidance clearly states that these “guidelines do not guarantee access and countywide COVID-19 rates where a facility is located may impact access.” It does, however, establish three levels of COVID-19 countywide activity that impact access with low and medium positivity rates allowing for indoor visits and high rates limiting access to compassionate care situations only. Per data provided by Wisconsin DHS, there are currently 49 Wisconsin counties with low positivity rates, 19 with medium rates and only four with high rates that would directly restrict access. These rates represent a significant improvement of the COVID-19 situation across the state and increase the possibility for SVD visits for the April 6, 2020 Spring Election.

As assisted living facilities are not covered by CMS guidance, access to those facilities will be difficult to generally assess and may have to be determined on a facility-by-facility basis. DHS officials who oversee administration of these facilities indicated that guidance similar to the CMS guidance is currently being followed, but is not tied to any federal requirements. This means access to assisted living facilities may be similar to nursing home access but there are significantly more assisted living facilities, and uniform adherence to these guidelines should not be expected. DHS has developed guidelines for “Safer Visits” in assisted living facilities that outline core principles similar to the CMS principles provided above, and the guidance also identifies administrative controls that facilities should enact to govern visits (<https://www.dhs.wisconsin.gov/covid-19/assisted-living.htm#safer-visits-in-assisted-living-facilities---relaxing-restrictions>). Among these controls are scheduling visits around facility staff availability for visitor screening and allowing facilities to continuously reassess their visitor policies “based on resident ongoing needs and responses, the facility and the local community COVID-19 status, staffing patterns, PPE availability, and current local and state guidelines.” DHS officials also indicated that communal activities such as dining and other social events are currently restricted.

If clerks are able to schedule SVD visits, they may have to work with facility administrators to navigate the following concerns:

- Facilities may require proof of a recent negative COVID-19 test result or require visitors to submit to onsite COVID-19 testing before being granted entry to a facility.
- Facilities trying to limit the number of visitors may be concerned with allowing required election observers in addition to the two SVDs.
- Facilities may require visitors to don full PPE, but this should be provided by the facility to ensure it is not compromised and meets their standards.
- Movement through the facility may be limited, which would reduce the ability for SVDs to make room visits.
- Communal gathering may still be restricted so residents may have to be separated into smaller groups if voting will take place in a common area.
- SVDs who make visits to multiple care facilities within a short time period may not be allowed into certain facilities due to concern over virus spread.

Staff has incorporated much of the public health guidance cited by DHS in the following recommended procedures for municipal clerks while preparing for care facility voting prior to the 2021 Spring Election. Flexibility will be essential for clerks as access to facilities may change in accordance with potential COVID-19 outbreaks at a facility or due to the rise in countywide infection rates. These recommended procedures attempt to balance the statutory requirement for two SVD visits with the reality that many facilities will be unavailable

for such visits, while also acknowledging the fallback option for voters in these facilities is to vote by mail when their facilities are unavailable for SVD visits.²

a. Work with care facility to determine their visitor policies.

Care facilities will have visitation policies that correspond with countywide positivity rates. We recommend that clerks contact care facilities as soon as possible to determine what their policies are and if there are any precautions the SVDs can take to protect public health. It is a good idea for clerks to begin planning whether SVDs will be able to enter the facility with additional steps, or if they will be prohibited altogether.

In order for SVD voting to occur, observers must also be allowed into the facility, which may further complicate SVD visits. While they are limited to one Democrat and one Republican per SVD team, the SVDs cannot conduct voting if the care facility is not allowing observers to enter. Observers must wear face coverings and may be required to follow additional procedures required by the care facility. We suggest SVDs conduct voting in large spaces in the care facility and have SVDs stationed at least six feet away.

Movement throughout the facility may also be restricted, which could impact the ability of SVDs to make room visits to administer ballots to residents who cannot travel to common areas where voting normally takes place. This may result in more voters than usual who are not available during the two visits and would require their ballot to be sent to them by mail instead.

b. Schedule visits early in the SVD voting cycle to ensure timely delivery of mailed ballots if necessary.

Under Wis. Stat. s. 6.875(6)(e), Special Voting Deputies must make two attempts to visit the care facility before clerks begin mailing the ballots. For the Spring Election, SVDs may start visiting the care facility on the fourth Monday prior to the Election Day (March 15 for the April 6 Spring Election). We suggest that clerks reach out to the care facility as soon as possible to begin planning dates to visit and try to plan those dates as close as possible to March 15. There is no required time in between visits, so it is possible to plan a visit on March 15 and March 16 and then mail the ballots after the second visit to residents that were unable to vote with an SVD. It is important that SVD visits are planned early so if they are not admitted, voters will have enough time to receive and return their ballot before Election Day.

As soon as the dates and times are selected (but not less than five days), clerks must prepare and post a notice at the facility five working days before the visit. The notice must also be provided to news media who have filed a written request for such notice, the municipality's official newspaper or, if none exists, to a news medium likely to give notice in the area. Finally, the notice must also be placed on the municipality's website, if any. Wis. Stat. § 6.875(6)(a). Notice of multiple visits to a facility may be made and posted at the same time. We suggest that the notice includes additional information about the visit, so residents and potential observers are aware. For example, if care facility policies will prohibit the SVDs from entering, note that it is likely that SVD voting will be attempted, but will not occur at the facility, and ballots will be mailed after the two attempted visits.

² Technically, Wis. Stats. §6.875(6)(a) allows that voters in facilities served by SVDs may also "Vote in person at the polling place serving his or her residence under s. [6.79 \(2\)](#) or in person at the office of the municipal clerk or board of election commissioners of the municipality where he or she resides under s. [6.86 \(1\) \(a\) 2](#)" but facility quarantine policies for residents who leave the facility may make this option difficult.

c. Work with each care facility to determine appropriate public health procedures for visits.

There may be precautions that SVDs and care facilities are able to make to promote health and allow entry to the care facility. Some potential options include:

- Moving SVD voting to larger spaces within the care facility to promote social distancing.
- If weather permits, holding SVD voting in outdoor areas.
- Quarantining prior to entering the care facility.
- Temperature checks and health assessments prior to entering the facility.
- Getting the COVID-19 Vaccine.
- Negative COVID-19 Test(s).
- Wearing face coverings, face shields, gloves, or other PPE as required by the facility.
- Scheduling voters in groups so that all residents who wish to vote are not required to be in common areas at the same time.

WEC and state public health officials will not be able to determine what precautions will be necessary for each individual facility. Each municipal clerk will need to work with the SVD qualified care facilities and public health departments in their municipality and county to determine what precautions are required to access the facility. When working with care facilities and health departments to make arrangements, clerks must also heed the statutory provisions that state care facility staff cannot assist or handle any election materials during SVD voting. Additionally, observers can be required to follow basic public health guidance, but may not be required to do anything unreasonable, such as be vaccinated, pay for additional testing, or quarantine for 10 days prior to observing at a care facility. Clerks may also need to work with care facilities to understand what may be possible for private, remote observation that does not infringe on resident's privacy.

Further, there is no statutory mandate that requires care facilities to allow SVDs or observers access to a facility if they have a legitimate reason to deny access such as a health or safety concern. There is also no requirement that facilities, or clerks, provide remote observation technology or opportunities. The availability of these options, or resident's willingness to participate, will vary by facility.

d. Contact your local health departments to see if any local health orders impact access.

The municipal or county health department can help clerks navigate health orders, including face coverings, quarantining, vaccinations, and potential prohibitions on visitors to care facilities. There may be certain precautions that SVDs must take prior to entering the facility and best practices to protect both the SVDs and residents of the care facility. In addition, local health departments may also have restrictions in place regarding the size and type of gathering in common areas of these facilities.

e. Training Opportunities for Care Facility Staff

If any voter is not able to cast their ballot during the two attempted SVD visits, the clerk should proceed to send the voter their ballot. Ballots can be sent by mail or ballots can be delivered directly to the facility. These ballots should be treated like by-mail absentee ballots. Each ballot should be addressed to the specific voter who requested the ballot, and no extra ballots should be sent to the facility. Clerks can arrange for the pickup or delivery of the voted ballots from the facility to ensure timely return of ballots from voters served in this manner.

Due to competing priorities, we know that it may be difficult for care facilities to dedicate already limited staff time to helping residents vote. We appreciate any assistance that facilities are able to offer their residents and

ensure that they are able to cast their ballots. WEC staff plan on editing and creating training materials to review the voting process, including registration, requesting an absentee ballot, and filling out and returning the absentee ballot to help care facility staff navigate that process should it be necessary.

In addition, the Wisconsin Elections Commission will host a webinar for care facility staff reviewing the voting process. It will be recorded and posted online to be viewed at a later date. The Wisconsin Elections Commission also has training packets at <https://elections.wi.gov/node/7311>, including sample absentee requests, voter registration forms, and absentee envelopes. This packet can be updated to reflect the Commission's directives regarding SVDs.

Staff will also attend and participate in Assisted Living Forums and Skilled Nursing Facility webinars to discuss this process with facilities and answer questions. Staff will also attend any provider trade association spring conferences to present training on these issues, if invited.

f. Tips for Families

After two visits are attempted at the care facility, ballots may immediately be mailed out to voters. These voters will cast their absentee ballot just like any other regular by-mail absentee voter. Families have some options to help the voter respond to any concerns they may have about them casting an absentee ballot. Family can technically be present when a resident is voting their ballot, either by SVD or by-mail absentee, although visitor policies at care facilities, as previously discussed, may make this difficult. Family members can also observe the resident voting their ballot remotely via video chat.

g. Guidance Document

To answer questions of clerks and care facilities, WEC will need to issue a guidance document to clerks. Clerks have already began asking questions about the recommended approach for April, many of which do not have answers in statute. A draft clerk communication will be provided to the Commission for review prior to the March 2, 2021 meeting. The guidance document would relay the direction of the Commission regarding SVDs in April and will also serve as an FAQ to clerk questions. As WEC has explored this approach with municipal clerks and DHS, a number of questions have come up:

- What constitutes a visit to a care facility required to be served by SVDs?
- Should clerks physically send SVDs to facilities even if they have no realistic chance of being granted access to the facility?
- Can the SVD visit happen if proper notice has not been posted due to a lack of cooperation on the part of the facility?
- Can clerks appoint care facility staff as SVDs?
- Can a care facility be required to remotely allow observers?
- What happens if a facility will allow SVDs but not observers?

4. Commission Directive Regarding a Future Plan

At the January 15 Commission meeting, the Commission directed staff to develop a plan or approach for how voting should occur in care facilities in future circumstances where SVDs are not allowed to enter. Considering the analysis presented above, WEC staff believes it does not have statutory authority to prescribe an alternative for SVD voting, and that such alternative would require a change to existing state law. Therefore, WEC staff recommends that WEC adopt this issue as part of its 2021 legislative agenda. There may be future

circumstances, be it for quarantines or natural disasters, where SVDs will be denied access to a facility, so statutory guidance on this topic is necessary.

Commissioners have suggested alternatives like remote SVDs, extensive PPE for SVDs, deputizing care facility staff to conduct voting, and others, but each of these options would violate some aspect of state law that governs SVD voting. For example, state law presumes the SVDs are physically present at the care facility to administer voting. They are required to complete tasks such as “personally” offering ballots to residents with a request on file and sealing voted ballots in a carrier envelope and delivering those voted ballots back to the municipal clerk. In addition, options such as training care facility staff to serve as SVDs are currently outlawed by statute that explicitly forbid care facility staff from assisting voters during SVD voting.

In instances where a facility is unavailable for SVD visits, current statute only allows that if a voter is unavailable during the two SVD visits, a ballot may be sent to the voter. Even this option is problematic being that clerks have the ability to schedule SVD visits as late as the Monday prior to Election Day and it would be unlikely, if not impossible, for a voter unavailable during that visit to receive their by-mail ballot and return it in time to be counted.

Staff recommends that the Commission direct staff to continue research of options for these situations and develop suggestions for the Commission’s legislative agenda. The alternatives referenced above could be part of this discussion, but more analysis is needed to determine their feasibility and the interest of the legislature in considering any suggested changes to these procedures. The WEC should also work with clerks, aging and disability advocates, care facilities administrators, and public health officials to provide information on the alternatives and to identify statutory changes that would be needed for implementation. If there are specific options that the Commission would like for staff to research as part of the proposed legislative agenda for a future meeting, staff asks that the Commission indicate those specific alternatives as part of the Legislative Agenda research agenda item. Part of staff’s research for the legislative agenda could include the development of a committee to help advise on this issue and propose changes that would be most viable from a public health perspective. Staff could then analyze from a legislative and policy perspective what statutory changes would be needed.

Recommended Motion

WEC staff recommends the following motion for the Commission’s consideration

Specific to the April 6, 2021 election, clerks should work with SVD eligible care facilities in their municipality to schedule visits. SVDs and observers must comply with any requirements of the care facility or of state and local health departments to conduct the visits safely. If SVDs are denied access to the facility, then clerks must proceed to the provisions of Wis. Stat. §6.875(6)(e) and send voters their ballots. Clerks should schedule their SVD visits immediately in the allowable SVD period and consolidate such visits to the greatest extent possible, so that if attempted visits are denied that there are at least 14 days prior to the election for the voter to receive and return their absentee ballot.

Further, the Commission directs staff to issue the proposed guidance document and FAQ and to continue to conduct training for care facility staff and clerks on SVD voting including information on how voters may involve family members and others for remote observation.

Finally, the Commission directs that staff should research, in consultation with other subject matter experts, statutory changes needed in order to implement an alternative to SVD voting, as part of the Commission’s 2021 legislative agenda.

Absentee Voting in Residential Care Facilities and Retirement Homes: A Summary

The Wisconsin Legislature has established the privilege of absentee voting as an extension of the right to vote on Election Day. Over the course of decades, the Legislature has created and revised very specific rules for voting in certain residential care facilities and retirement homes through the use of Special Voting Deputies (SVDs). These rules are designed to ensure that residents of these facilities have the ability to vote, but also to ensure that voting is not improperly influenced.

These rules are contained in Wis. Stat. § 6.875, “Absentee voting in certain residential care facilities and retirement homes.” This subsection is now more than 2,500 words, and the Wisconsin Election Commission’s manual on the subject is 39 pages, including forms.

The WEC created this brief summary as an introduction to the law and to the roles of clerks, SVDs, observers, family members, and facility employees in the absentee voting process, which is commonly known as “SVD voting.”

A. Who is covered by SVD voting?

There are two types of facilities served by SVD voting.

1. Residents of a “residential care facility,” which is defined as an adult family home, community-based residential facility, nursing home, or residential care apartment complex.

However, just because someone lives in a residential care facility does not mean they must be served by SVDs. According to statutes, clerks “need not dispatch special voting deputies to visit any residential care facility unless there are at least 5 registered electors of the municipality who are occupants of the facility.” The clerk must also have at least one absentee ballot request on file from a resident of the facility.

2. Residents of a “qualified retirement home,” which means the municipal clerk has determined that a “significant number of the occupants of the retirement home lack adequate transportation to the appropriate polling place, a significant number of the occupants of the retirement home may need assistance in voting, there are a significant number of the occupants of the retirement home aged 60 or over, or there are a significant number of indefinitely confined electors who are occupants of the retirement home.”

B. Must residents of these facilities vote by SVD?

No. Even if the clerk sends SVDs to a facility, residents are free to vote at the polls on Election Day or in-person absentee in the municipal clerk’s office. However, if clerks send SVDs to a

facility, clerks may not mail absentee ballot to those voters unless they have been unable to vote after two unsuccessful SVD visits.

C. Who can be an SVD?

SVDs are appointed by municipal clerks. They are not clerks or their deputies. They must be qualified electors of the county, must attend training, and may not be employed by the residential care facility or qualified nursing home they will be serving. There are also restrictions on former employees and relatives of current and former employees of residential care facilities.

SVDs must take the Oath of Special Voting Deputy, which includes: “I understand that my sacred obligation is to fully and fairly implement the absentee voting law and to seek to have the intent of the electors ascertained. I realize that any error in conducting the absentee voting procedure may result in invalidation of an elector’s vote under §7.51(2)(e), Wis. Stats. I realize that absentee voting is a privilege and not a constitutional right.”

SVDs must work in pairs. Ideally, they are each nominated by one of the two major political parties. If a political party submits a list of nominees, the clerk must use names from the list. If the clerk does not receive party nominations, the SVDs do not need to be appointed from the parties.

D. What are the duties of an SVD?

The SVDs’ main duty is to visit residential care facilities and qualified nursing homes to deliver absentee ballots, assist voters who ask for help filling out those ballots, and return all voted and unvoted ballots to the municipal clerk’s office.

SVDs may assist voters by helping them register to vote, request an absentee ballot, and complete other certifications and paperwork associated with absentee voting.

SVDs also manage the process of voting at the facility, and they have the power to remove observers who do not follow the rules.

If a facility is large, a clerk may assign multiple pairs of SVDs to visit and conduct absentee voting.

E. Who can observe SVD voting?

Each major political party may appoint observers, who may accompany the SVDs to each facility where absentee voting will take place. They must show photo ID to the SVDs, sign a log and wear a tag or badge that says “Election Observer” on it. This means that there may be at least four people – two SVDs and two observers – visiting each facility and observing each voter.

F. What can observers see and hear?

The observers can be between 3 and 8 feet from where voters are marking their ballots, but they are not allowed to see the voter marking the ballot, and they are not allowed to hear the voter talking to the person assisting with marking the ballot. Observers may only enter resident’s rooms with the resident’s permission, but are allowed to observe voting from a resident’s doorway or hall.

G. What is the municipal clerk’s role in SVD voting?

Clerks are responsible for determining which facilities in their municipalities qualify for SVD voting, according to the criteria in the law.

Beyond appointing and training the SVDs, municipal clerks make arrangements with the facility’s administrator to schedule SVD visits, as well as to provide public notices of the dates and times of those visits. The municipal clerk shall contact the administrator of the facility as soon as possible, but no later than 5:00 p.m. on the sixth working day before an election.

Municipal clerks also keep lists of registered voters in each facility who have absentee ballot requests on file. This list should be shared with facility administrators.

H. When does SVD voting happen?

SVD voting may be conducted no earlier than the fourth Monday before the election and no later than 5:00 p.m. on the Monday before the election.

Municipal clerks are required to provide notice of two separate SVD voting at least five working days before the visit and no later than the Monday before the election. Notice must be posted at the facility, provided to local news media, and on the municipality’s website.

I. How often do SVDs visit?

SVDs are required to make up to two visits to facilities to offer the residents the opportunity to vote. The municipal clerk must arrange for a second visit if an occupant is unable to vote at the time scheduled for the facility due to any reason, including a quarantine, or if the clerk receives a new absentee application after the first visit. Clerks may schedule two SVD visits, and are not required to wait before scheduling a second visit.

J. What happens if SVDs are denied entry to a facility?

If SVDs are unable to conduct voting after two visits, the municipal clerk must mail absentee ballots to registered voters who live at the facility who have requested an absentee ballot.

K. Where does SVD voting happen in a facility?

Generally, SVD voting takes place in a common area of the home, facility or complex, but SVDs must also visit the rooms of residents who have requested a ballot but cannot come to the common area.

L. Who can assist a voter during SVD voting?

Only an SVD or a relative of the voter can assist the voter in reading and/or marking the ballot and completing the absentee certificate envelope.

M. What if a family member does not want a resident to vote?

Unless a resident has been found incompetent by a judge after a court proceeding, he or she cannot be denied the right to vote. It is not a medical or family decision or a determination of facility staff. A person adjudicated incompetent should have a guardian appointed for them and the order from the court appointing the guardian should specifically indicate that the person’s right to vote has been removed.

N. Are residents required to provide photo ID during SVD voting?

Voters living in residential care facilities or qualified retirement homes visited by SVDs are not required to provide proof of identification, regardless of whether the resident has applied for ballots as indefinitely confined. The signatures and addresses of both SVDs in the “Certification of Witness” section on the Absentee Ballot Certification envelope verifies that the name and address of the voter is correct and satisfies the photo ID requirement.

O. What security precautions are taken during SVD voting?

Clerks issue ballots delivered by SVDs in a ballot container or envelope that is secured with a tamper-evident seal. After voting, both SVDs re-secure the ballot container with a new tamper-evident seal and the seal number is recorded on paperwork that is returned to the clerk within 18 hours after voting has concluded.

P. What role do residential care facility administrators and employees have in SVD voting?

A facility administrator and staff may assist with the scheduling and organization of SVD voting, but state law specifically prohibits anyone who is employed by a facility from serving in the role of an SVD.

Q. Where in the facility does SVD voting occur?

SVD voting may take place in a facility’s common area, or if a common area is not available or if a resident needs SVD assistance in their room, then SVDs may go from room to room in a facility. Observers are only allowed in resident’s rooms with permission from the resident but are allowed to observe from the doorway or hall.

R. What happens if SVDs are unable to serve a voter during their two visits?

In the event that a voter is unavailable (for example, out of the facility at a medical appointment or not feeling well enough for visitors) during the two visits, the clerk must then mail the absentee ballot to the voter. Because the last SVD visit could occur the Monday before the election, this could cause logistical issues in getting a ballot to a resident in time for the voter to fill out the ballot and return it by 8 p.m. on Election Day. This is why clerks should schedule SVD visits as early in the window as possible.

S. What are the Statutes that govern SVD voting?

Wisconsin State Statute §6.875 outlines the SVD process as follows:

6.875 Absentee voting in certain residential care facilities and retirement homes.

(1) In this section:

(ab) "Adult family home" means a facility that is certified or licensed to operate as an adult family home under s. [50.032](#) or [50.033](#).

(ae) "Community-based residential facility" has the meaning given in s. [50.01 \(1g\)](#), except that the term does not include a place where fewer than 10 adults who are not related to the operator or administrator reside.

(am) "Nursing home" means a facility occupied by 10 or more unrelated individuals for the primary purpose of obtaining full-time personal or nursing care, which is necessitated by their physical or mental conditions, but does not include a hospital.

(asm) "Residential care apartment complex" means a facility that is certified or registered to operate as a residential care apartment complex under s. [50.034 \(1\)](#).

(at) "Qualified retirement home" means a retirement home that qualifies under sub. [\(2\) \(c\)](#) to utilize the procedures under this section.

(b) "Relative" means a spouse or individual related within the 1st, 2nd or 3rd degree of kinship under s. [990.001 \(16\)](#).

(bm) "Residential care facility" means an adult family home, community-based residential facility, nursing home, or residential care apartment complex.

(c) "Retirement home" means a facility occupied as a primary place of abode by 10 or more unrelated individuals.

(d) "Working day" has the meaning given in s. [227.01 \(14\)](#).

(2)

(a) Absentee voting in person inside residential care facilities and qualified retirement homes shall be conducted by municipalities only in the manner prescribed in this section. At any residential care facility or qualified retirement home where a municipality dispatches special voting deputies to conduct absentee voting in person under this section, the procedures prescribed in this section are the exclusive means of absentee voting in person inside that facility or home for electors who are occupants of the facility or home.

(c) The municipal clerk or board of election commissioners of any municipality where a retirement home is located may adopt the procedures under this section for absentee voting in any retirement home located in the municipality if the municipal clerk or board of election commissioners finds that a significant number of the occupants of the retirement home lack adequate transportation to the appropriate polling place, a significant number of the occupants of the retirement home may need assistance in voting, there are a significant number of the occupants of the retirement home aged 60 or over, or there are a significant number of indefinitely confined electors who are occupants of the retirement home.

(3)

(a) An occupant of a qualified retirement home or residential care facility who qualifies as an absent elector and desires to receive an absentee ballot shall make application under s. [6.86 \(1\)](#), [\(2\)](#), or [\(2m\)](#) with the municipal clerk or board of election commissioners of the municipality in which the elector is a resident. Except as provided in sub. [\(4\) \(ar\)](#), the clerk or board of election commissioners of a municipality receiving an application from an elector who is an occupant of a qualified retirement home or residential care facility located in a different municipality shall, as soon as possible, notify and send an absentee ballot for the elector to the clerk or board of election commissioners of the municipality in which the home or facility is located. Except as provided in sub. [\(4\) \(ar\)](#), the clerk or board of election commissioners of a municipality receiving an application from an elector who is an occupant of a qualified retirement home or residential care facility located in the municipality but who is a resident of a different municipality shall, as soon as possible, notify and request an absentee ballot from the clerk or board of election commissioners of the municipality in which the elector is a resident. The clerk or board of election commissioners shall make a record of all absentee ballots to be sent, delivered, and voted under this section.

(b) An occupant of a retirement home may vote in person at the polling place serving his or her residence or may apply for and cast an absentee ballot at the election in the same manner as provided for other electors of the municipality where he or she resides. If a retirement home that is not a qualified retirement home is located within a municipality on the same grounds as one or more residential care facilities to which the municipal clerk or board of election commissioners of the municipality dispatches special voting deputies to conduct voting at an election, the municipal clerk or board of election commissioners shall obtain from the

management of the retirement home the names and addresses of the occupants of the home. The municipal clerk or board of election commissioners shall then provide the names and addresses to the special voting deputies to verify which residents are eligible to cast their ballots with the special voting deputies.

(4)

(a) For the purpose of absentee voting in qualified retirement homes and residential care facilities, the municipal clerk or board of election commissioners of each municipality in which one or more qualified retirement homes or residential care facilities are located shall appoint at least 2 special voting deputies for the municipality. Except as provided in par. [\(am\)](#), upon application under s. [6.86 \(1\), \(2\)](#), or [\(2m\)](#) by one or more qualified electors who are occupants of a home or facility, the municipal clerk or board of election commissioners of the municipality in which the home or facility is located shall dispatch 2 special voting deputies to visit the home or facility for the purpose of supervising absentee voting procedure by occupants of the home or facility. The clerk or board of election commissioners shall maintain a list, available to the public upon request, of each home or facility where special voting deputies are dispatched. The list shall include the date and time the deputies intend to visit each home or facility. The 2 deputies designated to visit each qualified retirement home and residential care facility shall be affiliated with different political parties whenever deputies representing different parties are available.

(am) The municipal clerk or board of election commissioners of a municipality need not dispatch special voting deputies to visit any residential care facility unless there are at least 5 registered electors of the municipality who are occupants of the facility.

(ar) As an alternative to absentee voting inside a residential care facility or qualified retirement home, an elector who is an occupant of the facility or home may:

1. Vote in person at the polling place serving his or her residence under s. [6.79 \(2\)](#) or in person at the office of the municipal clerk or board of election commissioners of the municipality where he or she resides under s. [6.86 \(1\) \(a\) 2.](#); or
2. If the elector maintains a residence outside the facility or home, vote by applying for and casting an absentee ballot by mail under s. [6.86 \(1\) \(a\) 1.](#) at that residence.

(at) Except as provided in par. [\(ar\)](#), if a qualified elector of a municipality who is an occupant of a residential care facility or qualified retirement home in that municipality requests an absentee ballot for an election and the municipal clerk or board of election commissioners dispatches special voting deputies to that facility or home, the clerk or board of election commissioners shall give the absentee ballot to the special voting deputies who shall personally deliver the ballot to the elector at the time of their visit if they have not finished visiting the facility or home when the request is received.

(b) Nominations for the special voting deputy positions described in par. [\(a\)](#) may be submitted by the 2 recognized political parties whose candidates for governor or president received the greatest numbers of votes in the municipality at the most recent general election. The deputies shall be specially appointed to carry out the duties under par. [\(a\)](#) for the period specified in s. [7.30 \(6\) \(a\)](#). The clerk or board of election commissioners may revoke an appointment at any time. No individual who is employed or retained, or within the 2 years preceding appointment has been employed or retained, at a qualified retirement home or residential care facility in the municipality, or any member of the individual's immediate family, as defined in s. [19.42 \(7\)](#), may be appointed to serve as a deputy.

(5) Prior to entering upon his or her duties, each individual appointed to serve as a deputy under this section shall file the oath required by s. [7.30 \(5\)](#). In the oath, the individual shall swear that he or she is qualified to act as a deputy under this section, that he or she has read the statutes governing absentee voting, that he or she understands the proper absentee voting procedure, that he or she understands the penalties for noncompliance with the procedure under s. [12.13](#), that his or her sacred obligation will be to fully and fairly implement the absentee voting law and seek to have the intent of the electors ascertained. In addition, the oath shall state that the individual realizes that any error in conducting the voting procedure may result in invalidation of an elector's vote under s. [7.51 \(2\) \(e\)](#) and that the individual realizes that absentee voting is a privilege and not a constitutional right. The form of the oath shall be prescribed by the commission.

(6)

(a) Special voting deputies in each municipality shall, not later than 5 p.m. on the 6th working day preceding an election, arrange one or more convenient times with the administrator of each qualified retirement home and residential care facility in the municipality that the deputies are scheduled to visit. The time may be no earlier than the 4th Monday preceding the election and no later than 5 p.m. on the Monday preceding the election. The municipal clerk shall give notice of each visit by special voting deputies to a qualified retirement home or residential care facility in the same manner that notices of public meetings are provided by presiding officers under s. [19.84 \(1\) \(b\)](#) at least 5 working days in advance of each visit, indicating the date and time of the visit. The municipal clerk also shall post a notice at the home or facility and on the Internet indicating the date and time that absentee voting will take place at that home or facility. The notice shall be posted as soon as practicable after arranging the visit but in no case less than 5 working days before the visit. A municipal clerk whose municipality does not maintain an Internet site need not comply with the Internet posting requirement. At the designated time, 2 deputies appointed under sub. [\(4\)](#) shall visit the home or facility.

(b) The municipal clerk or executive director of the board of election commissioners shall issue a supply of absentee ballots to the deputies sufficient to provide for the number of valid applications for an absentee ballot received by the clerk, and a reasonable additional number of

ballots. The deputies may exercise the authority granted to the chief inspector under s. [7.41](#) to regulate the conduct of observers. For purposes of the application of s. [7.41](#), the home or facility shall be treated as a polling place. The municipal clerk or executive director shall keep a careful record of all ballots issued to the deputies and shall require the deputies to return every ballot issued to them.

(c)

1. Upon their visit to the home or facility under par. [\(a\)](#), the deputies shall personally offer each elector who has filed a proper application for an absentee ballot the opportunity to cast his or her absentee ballot. In lieu of providing a copy of proof of identification under s. [6.87 \(4\) \(b\) 1.](#) with his or her absentee ballot, the elector may submit with his or her ballot 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 shall enclose the statement in the certificate envelope. If an elector presents proof of identification under s. [6.87 \(4\) \(b\) 1.](#), the deputies shall make a copy of the document presented by the elector and shall enclose the copy in the certificate envelope. If an elector is present who has not filed a proper application for an absentee ballot, the 2 deputies may accept an application from the elector and shall issue a ballot to the elector if the elector is qualified, the elector presents proof of identification, whenever required, or submits a statement containing his or her name and address under this subdivision, and the application is proper. The deputies shall each witness the certification and may, upon request of the elector, assist the elector in marking the elector's ballot. The deputies shall not accept an absentee ballot submitted by an elector whose ballot was not issued to the elector by the deputies. All voting shall be conducted in the presence of the deputies. Upon request of the elector, a relative of the elector who is present in the room may assist the elector in marking the elector's ballot. No individual other than a deputy may witness the certification and no individual other than a deputy or relative of an elector may render voting assistance to the elector.

2. Upon the request of a relative of an occupant of a qualified retirement home or residential care facility, the administrator of the home or facility may notify the relative of the time or times at which special voting deputies will conduct absentee voting at the home or facility and permit the relative to be present in the room where the voting is conducted.

(d) Upon completion of the voting on each day at each residential care facility or qualified retirement home, the deputies shall seal the absentee ballot envelopes and any absentee ballot applications inside a carrier envelope and shall seal the carrier envelope and sign their names to the seal. The deputies shall place the envelope inside a ballot bag or container. As soon as possible after visiting each residential care facility or retirement home, but not later than 18 hours after the visit, the deputies shall deliver the ballot bag or container to the clerk or board of election commissioners of the municipality in which the elector casting the ballot resides.

(e) If a qualified elector is not able to cast his or her ballot on 2 separate visits by the deputies to the home or facility, the deputies shall so inform the municipal clerk or executive director of the board of election commissioners, who may then send the ballot to the elector no later than 5 p.m. on the Friday preceding the election.

(7) One observer from each of the 2 recognized political parties whose candidate for governor or president received the greatest number of votes in the municipality at the most recent general election may accompany the deputies to each home or facility where absentee voting will take place under this section. The observers may observe the process of absentee ballot distribution in the common areas of the home or facility. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit.

History: [1985 a. 304](#); [1987 a. 391](#); [1989 a. 192](#); [1997 a. 127, 188, 237](#); [1999 a. 32, 182](#); [2001 a. 16, 109](#); [2005 a. 149, 451](#); [2007 a. 96](#); [2011 a. 23, 75](#); [2013 a. 159](#); [2015 a. 118 s. 266 \(10\)](#).



Wisconsin Elections Commission

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DATE: March XX, 2021
TO: All Wisconsin Elections Officials
FROM: Meagan Wolfe, Administrator
SUBJECT: SVD Voting for the April 6, 2021 Spring Election

Many Wisconsin municipal clerks will be required to send Special Voting Deputies (SVDs) to qualified nursing homes and care facilities prior to the April 6, 2021 Spring Election. The Wisconsin Department of Health Services (DHS) has indicated that COVID-19 rates in many Wisconsin counties will allow for the possibility of visitor access at facilities normally served by SVDs, meaning that it may be possible to deploy SVDs to these facilities. This document will provide suggestions to consider when planning SVD visits, information regarding procedures to ensure a safe voting experience for voters, SVDs and care facility staff and answer questions WEC staff have received from local election officials.

The Basics

- State law requires municipal clerks to dispatch SVDs to qualified nursing homes and care facilities to conduct absentee voting prior to each election.
- Due to visitation policies dictated by COVID-19 infections rates and concerns for virus spread, facilities normally served by SVDs were not available for SVD visits for recent elections
- The COVID-19 rates in most Wisconsin counties have improved enough where SVDs visits are a possibility.
- State statues require, and the Commission concurs, that clerks must dispatch SVDs to care facilities for the two required visits, even if the clerk has been unable to confirm access to the facility or has been told that access will be denied. This is based on a legal opinion obtained by the Joint Committee on the Review of Administrative Rules.
- Clerks will have to coordinate any possible SVD visits in consultation with facility administrators, local public health officials, their SVDs, and observers from political parties to determine facility availability and any required public health procedures. The mechanics of how SVD voting should proceed will also have to be coordinated in accordance with facility and public health guidelines that may impact both the number of residents able to congregate at one time and the ability to conduct SVD voting using room visits.
- Information regarding SVD procedures can be found in the Absentee Voting in Residential Care Facilities and Retirement Homes manual: <https://elections.wi.gov/publications/manuals/nursing-home-absentee>

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Tips for Planning for SVD Visits:

1. Work with care facility to determine its visitor policies for SVDs and observers.

We recommend that clerks contact care facilities as soon as possible to determine whether they will accept SVDs, what their visitor policies are, and if there are any precautions the SVDs can take to protect public health. It is a good idea for clerks to begin planning whether SVDs will be able to enter the facility with additional steps, or if they will be prohibited altogether.

In order for SVD voting to occur, observers must also be allowed into the facility, which may further complicate SVD visits. While observers are statutorily limited to one Democrat and one Republican per SVD team, the SVDs cannot conduct voting if the care facility is not allowing observers to enter. Observers must wear face coverings and may be required to follow additional procedures required by the care facility. We suggest SVDs conduct voting in large spaces in the care facility and have SVDs stationed at least six feet away.

Movement throughout the facility may also be restricted, which could impact the ability of SVDs to make room visits to administer ballots to residents who cannot travel to common areas where voting normally takes place. This may result in more voters than usual who are not available during the two visits and would require their ballot to be sent to them by mail instead as permitted by Wis. Stat. § 6.875(6)(e).

2. Schedule visits early in the SVD voting cycle to ensure timely delivery of mailed ballots if necessary.

Under Wis. Stat. § 6.875(6)(e), Special Voting Deputies must make two attempts to visit the care facility before clerks begin mailing the ballots. For the Spring Election, SVDs may start visiting the care facility on March 15, 2021. We suggest that clerks reach out to the care facility as soon as possible to begin planning dates to visit and try to plan those dates as close as possible to March 15. There is no required time in between visits, so it is possible to plan a visit on March 15 and March 16 and then mail the ballots after the second visit to residents who were unable to vote with an SVD. It is important that SVD visits are planned early so if they are not admitted, voters will have enough time to receive and return their ballot before Election Day.

As soon as the dates and times are selected (but not less than five days), clerks must prepare and post a notice at the facility five working days before the visit. The notice must also be provided to news media who have filed a written request for such notice, the municipality's official newspaper or, if none exists, to a news medium likely to give notice in the area. Finally, the notice must also be placed on the municipality's website, if any. Wis. Stat. § 6.875(6)(a). Notice of multiple visits to a facility may be made and posted at the same time. We suggest that the notice includes additional information about the visit, so residents and potential observers are aware of any special instructions associated with the visits. For example, if care facility policies will prohibit the SVDs from entering, note that it is likely that SVD voting will be attempted, but will not occur at the facility, and ballots will be mailed after the two attempted visits.

3. Work with each care facility to determine appropriate public health procedures for visits.

There may be precautions that SVDs and care facilities are able to take to promote health and allow entry to the care facility. Some potential options that should be discussed when planning SVD visits with care facility administrators are listed below. Some of these items, such as quarantine and vaccination requirements, would be entirely optional.

- Moving SVD voting to larger spaces within the care facility to promote social distancing.
- If weather permits, holding SVD voting in outdoor areas.

- SVD and observer quarantining prior to entering the care facility.
- Temperature checks and health assessments prior to entering the facility.
- Getting the COVID-19 Vaccine.
- Negative COVID-19 Test(s) prior to entry.
- Wearing masks, face shields, gloves, or other PPE as required by the facility.
- Scheduling voters in groups so that all residents who wish to vote are not required to be in common areas at the same time.

In addition, facilities may require SVD visits to be administered following the public health procedures they have implemented to protect their residents and staff. Examples of topics to discuss when contacting facility administrators are listed below. Due to the varying requirements in each county and facility, we will not be able to provide clerks with standard procedures that will be required at each facility. Clerks will have to develop a plan for each facility that is consistent with the status of COVID-19 rates in their county, public health procedures required by local health ordinances and the requirements of the facility.

- Facilities may require proof of a recent negative COVID-19 test result or require visitors to submit to onsite COVID-19 testing before being granted entry to a facility.
- Facilities trying to limit the number of visitors may be concerned with allowing required entry to election observers in addition to the two SVDs.
- Facilities may require visitors to don full PPE, but this should be provided by the facility to ensure it is not compromised and meets their standards.
- Movement through the facility may be limited, which would reduce the ability for SVDs to make room visits.
- Communal gathering may still be restricted so residents may have to be separated into smaller groups if voting will take place in a common area.
- SVDs who make visits to multiple care facilities within a short time period may not be allowed into certain facilities due to concern over virus spread. Clerks may have to appoint and train additional teams of SVDs to account for this possibility.

When working with care facilities and health departments to make arrangements, clerks must also heed the statutory provisions that state care facility staff cannot assist or handle any election materials during SVD voting. Additionally, observers can be required to follow basic public health guidance. In some instances, facilities may have policies that require observers a visitors to be vaccinated, pay for additional testing, or quarantine for 10 days prior to observing at a care facility, which some observers may not be able to comply with. Clerks may also need to work with care facilities to understand what may be possible for private, remote observation that does not infringe on resident's privacy.

Further, there is no statutory mandate that requires care facilities to allow SVDs or observers access to a facility if they have a legitimate reason to deny access such as a health or safety concern. There is also no requirement that facilities, or clerks, provide remote observation technology or opportunities. The availability of these options, or resident's willingness to participate, will vary by facility.

4. Contact your local health departments to see if any local health orders impact access.

The municipal or county health department can help clerks navigate health orders, including face coverings, quarantining, vaccinations, and potential prohibitions on visitors to care facilities. There may be certain precautions that SVDs must take prior to entering the facility and best practices to protect both the SVDs and

residents of the care facility. In addition, local health departments may also have restrictions in place regarding the size and type of gathering in common areas of these facilities.

Guiding Principles for Safe Visits

State public health officials have developed guiding principles for safe visit in nursing homes and care facilities that should be considered when planning any visits. These principles and other information helpful to your preparation can be found here: <https://www.dhs.wisconsin.gov/covid-19/assisted-living.htm#safer-visits-in-assisted-living-facilities---relaxing-restrictions>. While this is the guidance for facilities to consider when implementing safe visits, the specifics of implementation and enforcement will rest with the individual facilities.

- Screening of all who enter the facility for all signs and symptoms of COVID-19 (e.g., temperature checks, questions or observations about signs or symptoms), and denial of entry of those with signs or symptoms.
- Hand hygiene (use of alcohol-based hand rub is preferred).
- Face covering or mask (covering mouth and nose) unless contraindicated. If there are barriers to masking, alternatives will be discussed with resident visitors and an individualized, acceptable plan will be implemented. Suggested alternatives could include:
- Maintain physical distancing in a well-ventilated room.
- In addition to physical distancing other protective measures include wearing face shields and using clear physical barriers, such as a clear divider (Plexiglas or similar product) barrier on a table.
- Social distancing at least 6 feet between persons, and reminders to maintain distancing even during the visit, as possible.
- Instructional signage throughout the facility and proper visitor education on COVID-19 signs and symptoms, infection control precautions, other applicable facility practices (for example, use of face covering or mask, specified entries, exits and routes to designated areas, hand hygiene).
- Cleaning and disinfecting high frequency touched surfaces in the facility often, and designated visitation areas after each visit.
- Appropriate staff use of personal protective equipment (PPE).
- Effective cohorting of residents (for example, separate areas dedicated COVID-19 care)
- Resident and staff testing conducted as recommended.

These core principles are consistent with the Centers for Disease Control and Prevention (CDC) guidance for assisted living facilities and should be adhered to at all times. By following a person-centered approach and adhering to these core principles, visitation can occur safely.

Also, assisted living facilities should enable visits to be conducted with a careful consideration for privacy. Visitors who are unable or unwilling to adhere to the core principles of COVID-19 infection prevention should not be permitted to visit or should be asked to leave. (WI Department of Health Services)

Frequently Asked Questions

1. Q: What constitutes a visit to a care facility required to be served by SVDs?
A: Special Voting Deputies must make a physical attempt to visit the facility in order to satisfy the requirement under state law.

2. Q: Should clerks physically send SVDs to facilities even if they have no realistic chance of being granted access to the facility?
A: Yes, that is the requirement under state law.

3. Q: Can the SVD visit happen if proper notice has not been posted due to a lack of cooperation on the part of the facility?
A: The notice for SVD voting is required by law to be posted five days prior to each visit. SVD visits should not take place if not properly noticed.

4. Q: Can clerks appoint care facility staff as SVDs?
A: No, they cannot. Care facility staff are prohibited by law from serving as SVDs while employed by a facility and for two years after employment ends.

5. Q: Can a care facility be required to remotely allow family to observe while a resident votes?
A: No, but many facilities may be able to accommodate this request and have been facilitating video calls with friends and family since visitation has been restricted.

6. Q: What happens if a facility will allow SVDs but not observers?
A: Observers from the two major political parties are required by law to be present when SVD voting takes place.



Wisconsin Elections Commission

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DATE: For the March 2, 2021 Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator

PRESENTED BY: Cody Davies Robert Williams
Election Specialist Election Specialist

SUBJECT: Update on Training Procedures, County Clerk Outreach, and ImageCast Evolution Overvote Data Analysis

Summary Findings

After detailed analysis of all ballot images and ballot manifestations from counties where the ImageCast Evolution (ICE) was programmed to read marks in the write-in field, there is no indication that the issue uncovered as part of the 2020 Post-Election Voting Equipment Audit impacted the outcome of any contest. In the seven counties where the ImageCast Evolution was programmed to read marks in the write-in field staff determined that there were 724 instances of absentee ballot creases running through that portion of the ballot causing a false positive overvote. Further analysis illustrated that this issue impacted a general total of five contests in 78 municipalities. The five general contests, expanded upon later in this report, include multiple Representative to the Assembly and State Senate district contests. Those contests were impacted by this issue due to their ballot placement, with all of them laid out in areas of the ballot where absentee ballots could be folded. This issue was not always determined to be county-wide. In many cases, the majority of occurrences were confined to only a few municipalities within the county. The occurrence rate was found to be higher in locations where Commission prescribed administrative procedures were not strictly followed. A comprehensive explanation of staff findings can be found later in this report.

Background

As part of the 2020 post-election voting equipment audit, a tabulation issue was discovered in two reporting units that use the Dominion ImageCast Evolution (ICE) optical scan tabulator. This was not a programming or hardware issue. It was discovered that absentee ballots containing a heavy crease through the write-in area of the ballot were triggering overvotes on the ICE. Despite a warning screen prompting election inspectors that there was an overvote, or overvotes, on the ballot, administrative procedures which require such ballots be returned and reviewed by election inspectors were not followed and the override function was used to process the ballots. As a result, numerous ballots were treated as having overvotes that actually had valid votes. If these ballots had been returned and reviewed, as required, it would have been determined that these ballots should have been remade and the votes in the contests the equipment perceived as overvoted would have been correctly counted.

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Most absentee ballots are printed on ballot stock that is “scored” with indentations where folds should occur. This “scoring” encourages folds that will not pass-through areas of the ballot where voters mark their preferences for candidates or ballot initiatives. Many of the ballots in question were either not “scored” or voters did not properly fold their ballots along the “scored” indentations. In addition, absentee ballot folds are more likely to occur through sections of the ballot where specific contests, such as Representative to Assembly, are required to be placed. Ballot layout requirements account for why specific types of contests were impacted by this issue at a higher incidence rate than others.

At the February 3, 2021 meeting, WEC staff presented the findings of the voting equipment audit to the Commission, including a detailed analysis of the issue of crease induced overvotes on the ImageCast Evolution. As part of the final report, WEC staff recommended to the Commissioners an amendment to the Wisconsin state certification of Democracy Suite 4.14, of which the ICE is included. The Commission voted to amend the Democracy Suite state certification so that the target area of the ballot would be reduced from including the oval and the write-in box, to include the oval only. Beginning with the April 2021 Spring Election, the creased overvote issue that was brought to light as part of the 2020 voting equipment audit will no longer be possible as all ICE tabulators in use throughout Wisconsin are now required to be programmed to ignore marks, intentional or ambiguous, in the write-in field.

As a result of the Commission decision, any election programming, beginning with the April 2021 Spring Election, must be done in such a way that the ICE tabulator has a ballot target area of only the oval marked by the voter. Any ICE tabulator used in Wisconsin may no longer be programmed to review the write-in target area for marks, stray, ambiguous, or otherwise. Anyone completing election programming, regardless of whether it is done by the county, the vendor, or a third-party representative, must program the ICE tabulators to the same standards as outlined above. Voters are, however, still entitled to cast a write-in vote for any office. Election night review of all ballots by election inspectors for write-in votes is required to identify any ballots with write-in votes, including those where the voter has written in a choice but not filled in the corresponding oval.

Commissioners also directed staff to collect and conduct an analysis of overvote data from counties throughout Wisconsin who use the ICE tabulator to determine the extent of the false positive overvote issue. Staff was also directed to inform counties impacted by the Commission decision to amend the state certification of the Democracy Suite 4.14, the voting system on which the ICE operates, and offer an updated training program for clerks and election inspectors to increase awareness of this issue and emphasize the importance of training prior to the 2021 Spring Primary.

Communication with Impacted Counties and Municipalities

On February 5, 2021, a communication was sent to the municipal and county clerks for every jurisdiction in which the ICE is used. This communication outlined the scope of the issue as reported to the Commission, provided information on the amendment of the Democracy Suite 4.14 certification and the resulting changes to how the ICE is programmed, and stressed the importance of increased training and extra awareness of the crease issue for the February 2021 Spring Primary.

Per the Commission’s directive, one of the primary areas of focus for staff is an increased level of training for clerks and election inspectors who interact with the ICE. Staff developed and recorded a training webinar that was posted to the WEC website on February 11, 2021. Additionally, a link to the webinar and links to the procedures for reviewing overvotes and remaking ballots as covered in the Election Day Manual were sent directly to the municipal and county clerk for every jurisdiction in which the ICE is used. To date, this webinar has been viewed more than 280 times.

This webinar covers the same background information on the nature of the issue as the communication that was sent to the affected jurisdictions. Staff also included a walkthrough of the procedures for correctly remaking overvoted ballots when appropriate and further reinforced the importance of following these procedures, as well as the consequences of not doing so, i.e., a voter's ballot choices not being appropriately counted.

On February 9, 2021, WEC staff hosted a call with county clerks from the counties in which the ICE is used. The purpose of this call was to discuss what had been accomplished up to that point and to clearly define the next steps in the process. Staff outlined the Commission's directive to further research the issue by obtaining the overvote rates for all ICE jurisdictions and solicited options from the clerks as to how to best gather and furnish this information to staff for further review. Following this call, counties began to submit data on their respective overvote rates, the collection process and analysis for which is detailed further in the applicable sections of this report.

Tabulator Programming Analysis

Of the 19 counties throughout Wisconsin that used ICE tabulators in the November 3, 2020 General Election, a majority used tabulators that were programmed in a such a way to ignore any marks in the write-in field. A total of 12 counties used ICE tabulators which were programmed to read only the oval and ignore marks in the write-in field. The remaining seven counties had tabulators programmed to review both the oval and write-in field for marks. It was in these seven counties where the issue of creases running through the write-in field caused overvotes.

Pre-election programming of the tabulators is completed by one of three parties: the county, an authorized third-party representative, or the vendor. Further analysis of pre-election tabulator programming can be found below.

Two counties, Fond du Lac and Racine, conduct pre-election programming in house for the ICE tabulators used in those counties. In the 2020 General Election, the tabulators in these two counties were programmed to ignore marks in the write-in field. Programming completed in this way made it impossible for any creases in the write-in field to cause an overvote. A further 10 counties utilize a vendor third-party representative to complete the pre-election tabulator programming. The authorized agent, Command Central, programmed the tabulators in each of these 10 counties to ignore marks in the write-in field. As with the counties that completed their own programming, the tabulators in the 10 counties where programming was completed by the authorized agent were incapable of experiencing the crease issue.

The remaining seven counties where ICE tabulators were used in the 2020 General Election comprise the complete extent of locations where the write-in crease overvote issue was observed. Tabulators in these counties were programmed by the vendor to review both the oval and write-in field for marks. The seven counties are Door, Green, Ozaukee, Vilas, Walworth, Winnebago, and Washington. As mentioned earlier in this report, though this issue presented itself on 723 ballots, for a total of 724 creased overvotes, there is no indication that the outcome of any contest was altered. A full list of counties using ICE tabulators and the programming entity can be found below.

Counties Using ImageCast Evolution and Programming Entity

Programmed by Command Central	Programmed by Dominion	Programmed by County
Price	Green	Fond du Lac
Crawford	Winnebago	Racine
Grant	Ozaukee	
Juneau	Walworth	
Oconto	Door	
Oneida	Washington	
Rusk	Vilas	
Sawyer		
Trempealeau		
Waupaca		

Data Collection Process

In order to determine the extent of the ballot crease issue, staff began by directly contacting the clerks of counties where the ICE tabulator was used in the 2020 General Election. After a productive call with the clerks of all 19 counties, staff followed up with a questionnaire to the county clerks to further clarify who was responsible for the programming of the tabulators, whether they were programmed to review for marks in the write-in field, if there would be any issues implementing the amended state certification requirement approved by the Commission, and if the counties were able to provide overvote summaries, ballot images and manifestations. Many counties were able to provide overvote reports detailing where and in which contests overvotes occurred in the 2020 General Election. The counties that were unable to provide an overvote report instead sent copies of the tabulator results tapes from election night. A full list of the questions sent to clerks can be found in Appendix A.

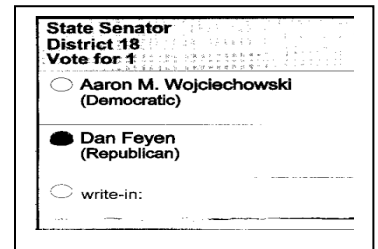
As noted in this report, 12 counties responded that the tabulators were programmed to ignore marks, either intentional or ambiguous, contained in the write-in field. This means that no matter how heavy the crease, anything contained in the write-in field of ballots in those 12 counties would not be read by the tabulator. Write-in votes were only recognized by the tabulator if the oval was marked by the voter. After reviewing submitted overvote reports and election night results tapes, staff determined that the overvote totals in these 12 counties did not deviate from what was anticipated. As a result, attention was turned to the remaining seven counties, where programming allowed for marks in the write-in field to be read, in order to ascertain the extent of the absentee ballot crease issue.

In the seven remaining counties, staff observed a trend of higher-than-expected overvote totals when reviewing the overvote reports and election night results tapes provided by the county clerks. Since two of these counties were locations where the crease issue was first discovered in the voting equipment audit, and each of the seven counties used ICE tabulators programmed to read marks in the write-in field at the 2020 General Election, further investigation was conducted. Staff contacted both the county clerks and equipment vendor to obtain ballot images and manifestations for every ballot containing an overvote that was processed on election day in each county. Wisconsin state certification requires ballot images to be saved for every ballot processed by a tabulator on election day. Ballot manifestations, sometimes referred to as a cast vote record, are a detailed summary of every contest and vote on the ballot, and how those votes were counted. Ballot images and manifestations were provided promptly by the equipment vendor for WEC staff review.

Data Analysis and Findings

Upon receipt of the overvoted ballot images and manifestations from the seven counties, which were either furnished directly by the county clerks or via a secure file share from the vendor, staff commenced with a review of each ballot image. In total, 1,110 overvoted ballot images were reviewed and placed into one of three categories, which were predicated on the root cause of the overvote on each ballot. In addition to tracking the occurrence rate of crease induced overvotes, staff also tracked and categorized two other overvote types, dividing these into three categories, to gain a full understanding of the issue at hand. The three categories into which overvotes were categorized were creased overvotes, marked overvotes, and other overvotes.

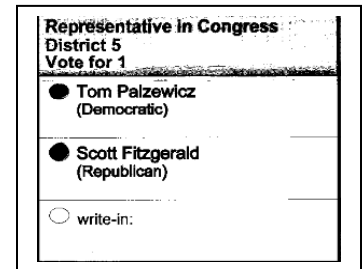
Creased overvotes, which were the primary focus of this review and analysis, and exemplified by the image to the right, are ballots on which heavy creasing caused by the folding of an absentee ballot, traversing the write-in field, was identified as an overvote by the tabulator but, in contravention of established procedures, the ballots were not remade and were instead processed via the override function. There were creased overvotes found, to some extent, in all seven counties where election programming of the ICE tabulators dictated that the write-in field be reviewed for marks. In total, there were 724 creased overvotes in 5 overall contests found on the ballot images from 78 municipalities in these seven counties. The contests in which crease overvotes were found varied by county and across districts but can be categorized into one of five general contests: State Senator, Representative to the Assembly, County Treasurer, Register of Deeds, and President/Vice President. A summary of creased overvotes by contest and can be found below. More detailed information on contest summary by county and contest, including the number of votes impacted by candidate, can be found in Appendix C.



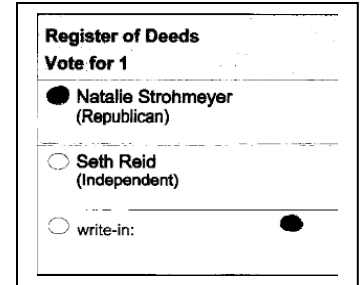
Creased Overvote Totals by Contest

Contest	Total Number of Creased Overvotes
President/Vice President	4
State Senator	345
Representative to the Assembly	38
County Treasurer	170
Register of Deeds	167

Ballots containing intentionally marked overvotes were also analyzed by staff. Marked overvotes are considered to be votes cast in any contest on the ballot in which the voter chose more candidates than they are allowed in that contest, such as if a voter selects two candidates in a “vote for 1” contest. An example can be found in the image to the right. State law does not prevent voters from marking their ballot in this way, though no votes are counted in the specified contest if voter intent cannot be determined, or if the voter chooses to cast their ballot with overvotes.



The “other” category included ballots that could not be categorized by one of the other two classifications. This group of overvoted ballots included ballots that were incorrectly read as overvotes due to a smear on the scanner of the tabulator and ballots on which the ink in an oval from another contest on the opposite side of the ballot bled through to the degree that it was picked up as an overvote in the write-in field, often referred to as an ink bleed through. Ink bleed through, while rare, occurs when a marking device such as a felt tip marker is used to mark a ballot. These markers in no way negatively impact the processing of properly marked votes. However, when too much ink was applied to an oval, such that it soaked through to the back side of the ballot, the tabulator considered those soaked through marks within the write-in field to be valid. As with the issue of creased overvotes, the Commission decision to amend the Democracy Suite 4.14 to limit the ballot target area will serve as a remedy to prevent this type of occurrence from happening in future elections. While the creased ballots constituted the majority of the overvotes on the reviewed ballot images, it is important to highlight the fact that most of the overvoted ballots in the “other” category would have been counted as valid votes had proper procedures for remaking ballots been followed. The table below shows the summary of the overvoted ballots from each of the 7 counties.



Appendix B of this report provides additional context for this overall data set, including the number of occurrences of each type of overvote for each municipality in which they were recorded.

Overvote Summary of all Ballot Images Reviewed

County	Creased Overvotes	Marked Overvotes	Other	Total
Door	1	17	0	18
Green	87	1	0	88
Ozaukee	165	40	1	206
Vilas	43	15	14	72
Walworth	18	130	37	185
Washington	61	87	1	210
Winnebago	349	86	19	454
Total	724	376	72	1,233

Next Steps

Moving forward, staff will contact the equipment vendor and counties utilizing the ImageCast Evolution tabulator to ensure that the updated programming requirements as approved by the Commission are being followed. As 12 of the 19 counties where the ICE is used are already meeting this requirement, staff will consider the remaining seven counties to be priority. Communications with the vendor and the counties has shown that all parties involved are committed to implementing the updated programming requirement. Furthermore, programming in the 12 counties unaffected by creased overvotes shows that the ICE tabulators are able to be programmed to ignore marks in the write-in field.

As part of future trainings, staff will also continue to emphasize the importance of overvote totals review as part of the municipal canvass process. Conducting such a review at the time of municipal canvass is an important step that should be taken by local election officials to ensure that the public has a complete picture of the local election results.

Conclusion

Through County Clerk outreach, an increased training emphasis, and thorough analysis of all ballot images and ballot manifestations from the seven counties impacted by the issue of creased overvotes, staff has made every effort to ensure that the desire for further exploration of the overvote issue expressed by the Commission has been met. County and Municipal Clerks have been very open and understanding regarding reinforced training, updated processes, as well as new programming requirements for ICE tabulators for all future elections beginning in April 2021. With continued support from clerks statewide, and the Commission's amendment to the Democracy Suite 4.14 state certification, the creased overvote issue revealed as part of the 2020 voting equipment audit should present no further complications in any future elections.

Recommended Motion

The Commission accepts and adopts this report on training procedures, County Clerk outreach, and ImageCast Evolution overvote data analysis.

Appendix A: County Clerk Outreach

The following questions were sent to all county clerks who utilized the ImageCast Evolution tabulator at the 2020 General Election as part of data collection for further analysis as directed by the Commission.

1. Did your programming for the ICE for 11/3/2020 allow for it to recognize marks in the write-in target area in addition to the oval?
2. What about for February 2021?
3. Will you be able to accommodate this new requirement for April programming? If not, please explain.
4. Do you have a summary report of overvote totals for each contest by reporting unit for the 11/3/2020 election?
 - a) If so, are there any contests you have identified with concerning overvote totals?
 - b) If not, do you have the machine tapes for municipalities that use the ICE?
 - c) If not, do we need to contact the muni to get copies of those?
5. If needed, do you have access to the ballot images and ballot manifests from the 11/3/2020 election? If not, who has custody of those records?
6. Does the election results management software allow you to sort ballot images by overvotes?

Appendix B: Overvote Totals by County and Municipality

Door	Municipality	Creased OV	Marked OV	Other OV	Muni Total
	Multiple*	1	17	0	18
Green	Municipality	Creased OV	Marked OV	Other OV	Muni Total
	Town of Adams	1	0	0	1
	Town of Albany	2	0	0	2
	Town of Cadiz	4	0	0	4
	Town of Clarno	4	0	0	4
	Town of Decatur	10	0	0	10
	Town of Exeter	15	0	0	15
	Town of Jefferson	33	0	0	33
	Town of New Glarus	5	0	0	5
	Town of Sylvester	0	1	0	1
	Village of Albany	13	0	0	13
	Green County Totals:	87	1	0	88
Ozaukee	Municipality	Creased OV	Marked OV	Other OV	Muni Total
	City of Cedarburg	3	2	1	6
	City of Mequon	54	12	0	66
	City of Port Washington	2	2	0	4
	Town of Belgium	3	0	0	3
	Town of Cedarburg	2	5	0	7
	Town of Fredonia	0	2	0	2
	Town of Port Washington	3	1	0	4
	Town of Saukville	0	1	0	1
	Village of Bayside	0	1	0	1
	Village of Fredonia	1	2	0	3
	Village of Grafton	91	3	0	94
	Village of Saukville	6	4	0	10
	Village of Thiensville	0	5	0	5
	Ozaukee County Totals:	165	40	1	206
Vilas	Municipality	Creased OV	Marked OV	Other OV	Muni Total
	City of Eagle River	0	3	0	3
	Town of Arbor Vitae	1	1	0	2
	Town of Boulder Junction	0	1	1	2
	Town of Lac Du Flambeau	42	6	0	48
	Town of Lincoln	0	2	13	15
	Town of Plum Lake	0	1	0	1
	Town of Presque Isle	0	1	0	1
	Vilas County Totals:	43	15	14	72

Walworth	Municipality	Creased OV	Marked OV	Other OV	Muni Total
	City of Delavan	0	1	0	1
	City of Elkhorn	0	7	0	7
	City of Lake Geneva	1	25	3	29
	City of Whitewater	0	6	0	6
	Town of Bloomfield	0	1	0	1
	Town of Darien	0	10	0	10
	Town of Delavan	3	13	0	16
	Town of Geneva	6	4	0	10
	Town of La Grange	0	2	0	2
	Town of Lafayette	0	1	0	1
	Town of Linn	0	10	0	10
	Town of Lyons**	2	2	32	36
	Town of Richmond	0	1	0	1
	Town of Sharon	0	2	0	2
	Town of Sugar Creek	0	2	0	2
	Town of Troy	0	8	0	8
	Town of Walworth	0	2	0	2
	Town of Whitewater	0	2	0	2
	Village of Bloomfield	0	4	0	4
	Village of Darien	0	3	0	3
	Village of East Troy	0	7	0	7
	Village of Fontana	0	2	0	2
	Village of Mukwonago	0	1	0	1
	Village of Walworth	0	2	2	4
	Village of Williams Bay	6	12	0	18
	Walworth County Totals:	18	130	37	185
Washington	Municipality	Creased OV	Marked OV	Other OV	Muni Total
	City of Hartford	50	17	0	67
	City of West Bend	0	20	1	21
	Town of Barton	0	5	0	5
	Town of Erin	7	3	0	10
	Town of Farmington	0	2	0	2
	Town of Hartford	0	4	0	4
	Town of Jackson	0	1	0	1
	Town of Trenton	0	1	0	1
	Town of West Bend	0	3	0	3
	Village of Germantown	2	20	0	22
	Village of Richfield	2	8	0	10
	Village of Slinger	0	3	0	3
	Washington County Totals:	61	87	1	149
Winnebago	Municipality	Creased OV	Marked OV	Other OV	Muni Total

	City of Menasha	0	11	0	11
	City of Neenah	7	3	0	10
	City of Omro	0	1	0	1
	City of Oshkosh	306	41	6	353
	Town of Algoma	13	4	4	21
	Town of Black Wolf	2	0	0	2
	Town of Clayton	1	5	0	6
	Town of Neenah	0	3	0	3
	Town of Omro	10	3	5	18
	Town of Winchester	3	1	0	4
	Village of Fox Crossing	7	14	4	25
	Winnebago County Totals:	349	86	19	454

- * Door County has several municipalities with the same ballot style, so it is unclear as to which municipality had the crease-originated overvote in the President/Vice-President contest (7 total overvotes in this contest in the county).
- ** Staff have followed up with Dominion Voting Systems for further information, but it appears that there was a smudge/debris on the scanner head of the tabulator in this jurisdiction that left a dark line on several ballots and contributed to the high occurrence of “other” overvotes in this municipality.

Appendix C: Creased Overvote Totals by Contest and Candidate

The table below represents the total number of creased overvotes in each of the 7 affected counties by both contest and number of negatively impacted votes per candidate in each contest.

Door	Contest	Total Creased OV	Affected Candidate	Votes Impacted
	President/Vice President	1	Biden/Harris	1

Green	Contest	Total Creased OV	Affected Candidate	Votes Impacted
	Register of Deeds	87	Meudt	87

Ozaukee	Contest	Total Creased OV	Affected Candidate	Votes Impacted
	State Senate District 8	2	Darling	1
			Plotkin	1
	Register of Deeds	163	Morrison	163

Vilas	Contest	Total Creased OV	Affected Candidate	Votes Impacted
	State Senate District 12	1	Czaja-Felzkowski	1
	Representative to the Assembly District 74	5	Bolen	1
			Meyers	4
	Register of Deeds	37	Bierman	37

Walworth	Contest	Total Creased OV	Affected Candidate	Votes Impacted
	President/Vice President	1	Biden/Harris	1
	Representative to the Assembly District 31	5	Lochner-Abel	2
			Loudenbeck	3
	Representative to the Assembly District 32	11	August	9
			Gaulke	2
	Register of Deeds	1	Jacobs	1

	Contest	Total Creased OV	Affected Candidate	Votes Impacted
Washington	President/Vice President	1	Trump/Pence	1
	State Senate District 8	11	Darling	5
			Plotkin	6
	County Treasurer	7	Henke	7
	Register of Deeds	42	Martin	42

	Contest	Total Creased OV	Affected Candidate	Votes Impacted
Winnebago	President/Vice President	1	Biden/Harris	1
	State Senate District 18	331	Wojciechowski	202
			Feyen	129
	Representative to the Assembly District 55	12	Cabral-Guevara	5
			Shierl	7
	Representative to the Assembly District 56	3	Murphy	2
			Lawrence	1
	Representative to the Assembly District 57	2	Snodgrass	1
Beach			1	



Wisconsin Elections Commission

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DATE: For the March 2, 2021 Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator

PREPARED BY: Jodi Kitts Dawn Soletski Connie Shehan
WisVote Specialist WisVote Specialist WisVote Specialist

SUBJECT: Electronic Registration Information Center (ERIC) 2021 Movers List Process

This memo provides information on background, options, processes, and costs related to the 2021 ERIC Movers process.

Background

In the February 2, 2021 ERIC report to the Commission, it was reported that 16,698 or 7.2% of the 2019 ERIC Movers had updated or affirmed their registration at the same address, noting that they had not moved and the address on their voter registration was correct. Commissioners subsequently asked staff to study this group further to identify the reasons these voters were on the list and improve the accuracy of future movers list efforts. Staff reviewed a subset (5%) of the voter records for these individuals. The majority (99%) of these were regular voters, meaning they were not military nor permanently overseas. Approximately 40% of the voters were long-term voters, having been registered at that address prior to 2006. Staff confirmed that all of these voters did have some type of transaction that reflected an address different than the one on their voter registration.

While available data from the Wisconsin Department of Transportation Division of Motor Vehicles (WisDOT-DMV or DMV) show a different address, or a variation in the address from that in their voter record, the DMV does not differentiate between transactions when a DMV customer moves from other types of transactions. This means a DMV customer could register a vehicle for someone in their household, indicate a vehicle storage location, or perform another type of transaction where an address is provided for non-residential purposes. Because DMV's requirements do not require them to differentiate type of transactions, all transactions are submitted to ERIC for analysis of differences between DMV and voter data. Reasons a DMV customer may make a DMV transaction for non-residential purposes include registering a vehicle or obtaining a driver's license at an address other than the address they considered to be their voting residence. This included persons who registered a vehicle at a business address, vacation home, or their child's college address, and college students who obtained a driver's license when they are temporarily living away from home. In these situations, the voters may have provided an address in their transaction with the WisDOT-DMV that was different from their voting address, even though WisDOT-DMV asked for their residential address on their forms. These voters were likely unaware that the information provided to the WisDOT-DMV would affect their voter registration status. Transactions were split 56% WisDOT-DMV and 39% USPS, while 5% were on both lists.

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

The proof of residency statutes for obtaining a DMV product, and the proof of residency statutes for registering to vote, are two distinct laws with different documents that can be used. There is no statutory tie between residency for DMV purposes and residency for voting purposes. There can be legitimate reasons, under these separate laws, that a Wisconsin resident would conduct a DMV transaction at one address and be registered to vote at the address where they legally reside for voting purposes.

No significant trends were discovered that would dictate changes in how the data is analyzed or filtered. Inferences can be made that these individuals have a business or transportation-specific reason to indicate a different address on their DMV record but consider the voting address their permanent, residential address. Over the last 4 years WEC has worked with WisDOT to see if there is additional data available that would identify transactions which do not affect a home residential address. That data is not currently available to WEC nor transmitted to ERIC. Through previous work with WisDOT, WEC identified datapoints that can be excluded, like monthly address standardizations that could adjust spellings in addresses, flagging a difference. WEC staff will continue to work with WisDOT to identify other such categories that can be eliminated from their future data uploads to ERIC. The agencies will also work together to identify commonality of address fields and terminology in customer and voter databases that could assist in this process. Ultimately, for WisDOT and WEC databases to compare data accurately, statutory changes would be needed to integrate the two databases and to compel DMV to collect more nuanced data about the transactions of their customers.

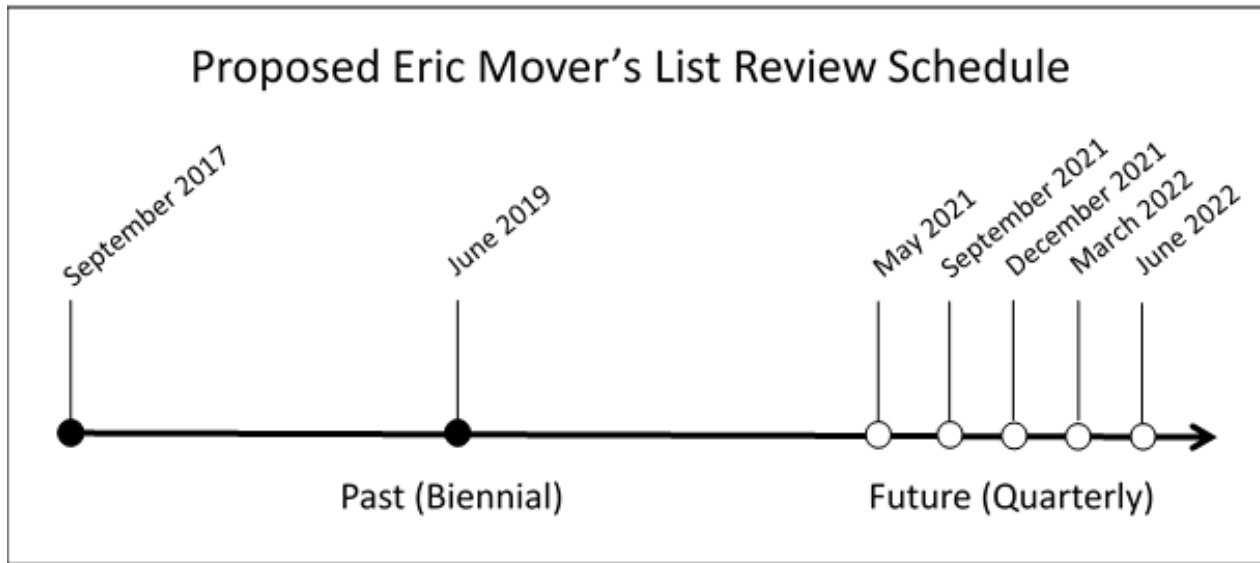
Other ERIC states are also subject to the National Voter Registration Act (NVRA). The state of Wisconsin is exempt from the NVRA. This means that in other ERIC states, the DMV is required to register voters. The DMVs in these states are required to track the type of transactions their customers conduct, if a transaction indicates a move for voting purposes under NVRA, DMVs in those states are required to offer the customer a voter registration opportunity and the DMV then must report to the state elections entity and the federal government what type of transaction was completed for both DMV and voting purposes. In Wisconsin, because of the NVRA exemption, the DMV has no requirement or legal reason to differentiate or report types of transactions. The Wisconsin DMVs database has no tie, or tailored reporting with elections. This means that while Wisconsin DMV transaction data does not always indicate a move by the resident, data from other states DMV will specifically indicate if the DMV transaction is indicative of a resident moving for voting purposes.

Proposed 2021 ERIC Mover Mailing Process

At the February 2, 2021 meeting, the Commission requested that staff report on the feasibility of more frequent processing of the ERIC Movers List maintenance program. Past iterations of ERIC Movers List maintenance were performed as one-time bulk mailings to huge groups of voters (2017 – 341,855 and 2019 – 232,579). Using these large data sets biannually highlighted potential areas for improvement. With more frequent processing, address change data will be timely and thus more relevant to the voter; updates will be spread throughout the year rather than in response to a one time mailing; processing smaller sets of data will facilitate more dynamic and efficient data quality review by WEC staff; and it will help to distribute phone, email, and website traffic more evenly to both WEC and local election officials.

Wisconsin's participation in ERIC regarding Movers data requires member states to "...at a minimum, initiate contact with that voter in order to correct the inaccuracy or obtain information sufficient to inactivate or update the voter's record." The proposed process (1) reaches out to voters identified on the most current list, (2) alerts them that a recent transaction identifies them as having moved, and (3) recommends options for updating their registration. The suggested language also informs the voter they may need to re-register before they can vote at the next election. This language is consistent with the 2019 ERIC mailer. The goal is to let the voter know that a transaction done at the WisDOT-DMV or USPS may affect their ability to vote at their previous polling place.

Conducting the ERIC movers mailing more frequently will help voters understand why they are on the list and if action to update their voter record is needed. When the mailer is done every 18 months, the voter is much more removed from the transaction that triggered the difference, and they may not think the mailing is relevant or timely. It is recommended that the Commission adopt a quarterly ERIC Movers mailing schedule. Voters will then receive the information in a timeframe where their move, or WisDOT transaction, is still relevant. It is assumed that this will lead to more voters who have moved updating their records timely and resulting in increasingly updated voter rolls and poll books before each election. The chart below outlines the proposed interval.



Currently, voters identified as having potentially moved from the address on their current registration are contacted through the Movers Mailing. The recipients of this mailing remain active and are identified with a flag of "Movers List" in the statewide voter database and a watermark on the poll book. Recipients can confirm their residential address is valid by affirming on MyVote.wi.gov or by participating in an election through Spring 2021. If they have moved, they can register at their new address through MyVote.wi.gov, submit a new registration to their municipal clerk, or complete an election day registration at their new polling place. Those who take any of these actions will have their "Movers List" flag removed, and their record will be reset to "Active-Registered." At the time of this writing, the WEC is awaiting a decision from the Wisconsin Supreme Court regarding the outcome of how the unchanged records will be processed going forward.

Upon direction from the Commission, WEC staff will obtain Movers data from ERIC after reconciliation of the April 6, 2021 Spring Election in May 2021. Transactions associated with this new data will include any voter-initiated transactions effected since the last list request in June 2019. Preliminary data quality checks are then performed on the records, including standardizing street naming conventions (e.g., 1st vs First); 1-7-character matching (i.e., formatting); and identifying PO Boxes as the main residential address. Records included in 2021 Four-year Maintenance, those with voter participation after the record request date, and military records are also excluded. Voters who initiate a voter registration in another state are inactivated, do not receive the mailing, and are not flagged as Movers.

The WI Department of Administration Bureau of Publishing and Distribution will again provide print and mail services. Forwarding service is authorized for the postcard. The initial postcard will be ready for the mail stream prior to June 30, 2021 with regular quarterly mailings beginning September 2021. Staff propose continuing to identify potential Movers with the Active-Movers status in WisVote as well as with "Have you Moved?" watermarks in poll book.

Following this meeting, staff will update clerk and poll worker training materials and include them as a resource on the WEC website. These enhanced materials will highlight any updated commission approved processes, including more frequent list maintenance review. They will also reinforce previously identified procedures designed to have voters in Movers status actively affirm their current address, whether at the polls or prior to processing an absentee application. These processes will also be highlighted to clerks when sending out election day preparation materials.

Future quarterly mailing processes are dependent on the Wisconsin Supreme Court's decision regarding agency deactivation authority. The notification process proposed for the June mailing can continue to be used until a court decision is received. The process is centralized, educates voters, adds no additional workload to clerks, and requires no changes in WisVote. If the court rules that WEC has the authority to deactivate voter registrations, a more centralized process is envisioned. Notifications would be mailed to voters quarterly, with a designated response time. WEC would run a process to centrally deactivate those voters that either confirmed they had moved or did not respond. Current functionality could be utilized in WisVote under the "Mailings" module so that clerks could review the mailings and voter lists. They could update and merge registrations as needed.

Staff may also create a module in WisVote that would allow clerks to regularly review records in a simple to access system similar to the current Registration List Alert process. WEC would continue to send out the mailings centrally, but clerks could review responses for deactivation or continuation, as with the Four-Year Maintenance mailing. An alert would generate for clerks to review records if there was no response from the voter or if the voter had affirmed they had moved. Staff expect to have more details at a future Commission meeting as soon as a court decision is received. Again, as this is the current subject of litigation, and the matter of deactivation is enjoined by the lower court, no action can currently be taken to change the status of Mover voters resulting from either the 2019 or the 2021 mailer. WEC staff will, however, continue to explore technical solutions to be postured to provide feedback or implement a solution to comply with the Court's ruling.

2021 ERIC Mailing Format

In relation to the 2021 Movers mailer, while the WEC is currently in compliance with the ERIC agreement, WEC will need to decide the direction of the next mailer in relation to the timeline and intervals set forth above. The Movers List postcard is a tool to educate voters and encourage them to be proactive in updating their voter registration record. It will identify actions needed to continue an active voter registration and remind voters to bring proof of residence to the correct polling place on the next election day if their address has indeed changed. The language on the front of the postcard states that a transaction with one of two government entities has initiated the mailing: WisDOT Division of Motor Vehicles or the US Post Office.

In designing an updated process and mailer language, current statutes and ongoing litigation were considered, as well as the process approved by the commission in 2019. Current ERIC membership requires contact with voters who have potentially moved. This language meets that criteria. It does not institute any inactivation language or action. It can be utilized for the ongoing, quarterly process moving forward or until such a time as the Commission receives updated guidance from the court.

The Commission used a 2-part tearaway letter for the 2019 mailer. Past usability testing conducted by the agency compared a postcard to a tearaway letter. Testing showed the tearaway return postcard portion of the letter would not be widely used because it did not include return postage and because an envelope would be needed. Staff therefore concluded the simple one-piece postcard is effective for notification, as well as being the

most cost-effective option. Final postcard design will be reviewed with US Post Office design representatives as well as DOA mail and distribution staff to verify all uniform mailing specifications are met.

A sample of the proposed mailer is shown in the attachments. WEC staff asks the Commission to consider both the language, the cost, the process, and the timeline of the mailer and to approve next steps timely. The process proposed is in keeping with the process adopted by the Commission in 2019. Since that time, no additional changes to statute or court rulings - excluding the stay on changing the status of voter records - have changed the parameters of the ERIC Movers process.

2021 ERIC Mailing Cost

The initial 2021 mailing is expected to be large, similar in size to 2019. Cost for printing and mailing will be dependent on the type of mailing piece chosen, but significantly cheaper than past mailings if the proposed postcard is used, and within the FY21 budget of \$141,300. Subsequent quarterly mailings would be smaller and done in the following fiscal year. Available budget will be dependent on the 2021-2023 biennial budget allocation.

Mailing Costs				
Types of Mailing (Includes printing, presort, postage)	Estimated Mailers	Turnaround Time	Cost	Cost per unit
4.25x6" two-sided color postcard, First Class Presort Permit Postcard Postage <PROPOSED>	250,000	10 business days from file receipt	\$74,600	\$0.298
4x6" double postcard black ink, First Class Presort Permit Postcard Postage (similar to 2017 design)	250,000	15 business days from file receipt	\$88,900	\$0.356
1 sheet two-sided color letter, bottom 1/3 perforated, return envelope, First Class Presort Letter Postage (similar to 2019 design)	250,000	12 business days from file receipt	\$147,800	\$0.592

ERIC Movers Costs		
Project (Fiscal Year)	Mail pieces	Expense
2017 Mailing (FY18)	341,855	\$141,258
2019 Mailing (FY20)	232,579	\$142,956
2021 Mailing Estimate (FY21)	250,000	\$74,600
2021 Mailing Estimate (FY22)¹	33,300 x 4	\$40,100 - \$47,800

¹Assumes 4 quarterly mailings of approximately 33,300 pieces in FY22 utilizing either of 2 postcard options listed above. Per piece price increases slightly for smaller quantities.

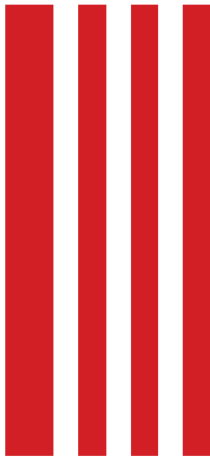
Next steps/Recommended Motion:

The Commission directs staff to process the initial 2021 Movers mailing in June 2021 then implement a quarterly ERIC Movers mailing process with updated clerk training materials beginning with the September 2021 mailing. The Commission further approves the language on the postcard, with the understanding that some non-substantive editing may be needed to address usability and printing requirements. Staff will report back on updated quarterly process options pending the court guidance regarding deactivation authority.

Memorandum Attachments:

- A. Movers postcard (double-sided)
- B. Example of MyVote Process

Postcard front



Have you moved?

Te has mudado?



MyVote.wi.gov

The Wisconsin Elections Commission wants to help you keep your voter registration record up-to-date.

A transaction with the WisDOT Division of Motor Vehicles or United States Postal Service indicates your address may be different than your current Wisconsin voter registration.

See options on back for next steps.

Postcard Back

Wisconsin Elections Commission
212 E. Washington Ave.
Madison, WI 53703-2855



If you have moved, you can register at your new address in one of three ways:

- Online at myvote.wi.gov or
- On the next election day at your polling place. Proof of residence is required to register to vote in Wisconsin or
- Submit a registration form to your clerk's office, in-person or by mail. A voter registration form, clerk information and proof of residence requirements can be found here: elections.wi.gov/voters

If you still reside at this address, please use one of the following options below to confirm:

- Click the gray *My Voter Info* button at myvote.wi.gov, enter your first and last name, and date of birth, then click the search button. Click the green *Confirm Your Address* button; or
- Vote in the next election where you can confirm with poll workers that you have not had a change of address.


If you have questions, call the WI Elections Commission toll free at (866) 868-3947 or email elections@wi.gov.

¿Necesitas ayuda en Español? Llama a su secretario municipal o [visita myvote.wi.gov/es-es/](https://myvote.wi.gov/es-es/).

Movers – MyVote Response Option

Voter information screen for voters marked Active-Movers

MY VOTER INFORMATION

 Johnson, John

Status: You are Registered to Vote! **Current Address:** 212 E Washington Ave , Madison, WI 53703-2855

[Update Name](#) [Click here to confirm your address](#)

[Update Address](#)

Response pop-up w/ certification text and redirect to OVR option

You are registered to vote at: ×

212 E Washington Ave , Madison, WI 53703-2855

[I certify that I still reside at the above address and want to remain registered at this address.](#)

OR

[I have moved and want to update my registration.](#)

Confirmation pop-up after choosing certification option

Your address has been confirmed at: ×

212 E Washington Ave , Madison, WI 53703-2855

Thank you!

You do not need to take any further action

[OK](#)



Wisconsin Elections Commission

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DATE: For the March 2, 2021 Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Wisconsin Elections Commission

Prepared by Elections Commission Staff

SUBJECT: Commission Staff Update

Sine the last Elections Commission Update staff of the Commission focused on the following tasks:

1. General Activities of Election Administration Staff

Spring Primary and Special Primary for Assembly District 89 and Senate District 13

At the Spring Primary on February 16, 2021, voters narrowed the field of candidates for State Superintendent of Public Instruction, Fond du Lac County Circuit Court Judge Branch 3, Green County Circuit Court Judge Branch 1, Kenosha County Circuit Court Judge Branch 6, and various local offices.

The special primaries for Assembly District 89 and Senate District 13 were held in conjunction with the spring primary. In Assembly District 89 there was one Democratic ballot access candidate, and five Republican ballot access candidates. In Senate District 13, there was one Democratic ballot access candidate, and three Republican ballot access candidates. The primary canvasses will be certified at the March 2, 2021 Commission meeting by Chairperson Jacobs.

Staff offered extended hours in support of clerks completing their preparations for the Spring Primary beginning on Friday, February 12 and continuing through the following Wednesday.

Friday, February 12, 2021 4:30 p.m. – 6:00 p.m.
Saturday, February 13, 2021 10:00 a.m. – 2:00 p.m.
Monday, February 15, 2021 4:30 p.m. – 6:00 p.m.
Tuesday, February 16, 2021 6:00 a.m. – 7:45 a.m. / 4:30 p.m.-10:00 p.m.
Wednesday, February 17, 2021 4:30pm – 6:00p.m.

The Spring Primary is historically a low-turnout event and with only one state contest and a handful of local contests requiring primaries; call volume was low and no major issues were reported.

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

2. Badger Voters

The Badger Voters program experienced a rise in data request activity due to the 2020 General Election. Currently, requests are being made by candidates running for the 2021 Spring Election. The nomination paper download process continues to be a success with customers and a timesaver for staff.

The following statistics summarize voter data and nomination paper requests through January 31, 2021.

Fiscal Year	Total Number of Voter Data Requests	Requested Files Purchased	Percentage of Requests Purchased	Total Revenue	Total Number of Nomination Paper Requests
FY2021	1020	833	81.7%	\$ 958,939.00	285
FY2020	1291	1134	88.0%	\$654,557.00	402
FY2019	617	473	76.6%	\$328,015.00	NA
FY2018	706	517	73.2%	\$182,341.00	NA
FY2017	643	368	57.0%	\$234,537.35	NA
FY2016	789	435	55.0%	\$235,820.00	NA
FY2015	679	418	61.6%	\$242,801.25	NA
FY2014	371	249	67.1%	\$125,921.25	NA
FY2013	356	259	72.8%	\$254,840.00	NA
FY2012	428	354	78.0%	\$127,835.00	NA

3. Education/Training/Outreach/Technical Assistance

Following this memorandum as Attachment 1 is a summary of information regarding initial certification and focused election administration training conducted by WEC staff since the last commission meeting in June. In preparation for the August Partisan Primary and November General and Presidential Election, the training team and elections specialists continued to focus on providing information and guidance about basic election processes, such as photo ID requirements and registering to vote. Commission staff also reviewed more complex election administration procedures, such as remaking ballots and when/how to count write-in votes.

Staff provided specialized election training through its election administration and WisVote webinar training series, including a review of overvote processing procedures, completing election forms and election reconciliation processes in the WisVote system for the fall elections. Staff developed webinar training on special polling place protocols, contingency planning and emergency preparedness due to COVID-19. The Election Day and Election Administration Manuals were revised to incorporate statutory references and process updates due to legislative changes and commission directives.

Staff participated in several virtual clerk conferences, including the Wisconsin Towns Association annual convention and the Clerks Institute Presidential Preparation conference. Several conferences were cancelled due to COVID-19 and organizers chose not to provide them in a virtual format.

4. Reconciliation and Statistical Reporting

Commission staff continuously work with municipal and county clerks to meet reporting requirements following all state and federal elections.

Initial reporting of the Election Administration and Voting Statistics Report data is due to be reported to the state no later than 30 days after an election, or 45 after a General Election. Managing and reconciling the additional data proves challenging for some municipalities and generally requires WEC staff assistance. In cases where a jurisdiction cannot reconcile voting statistics, Commission staff work with individual clerks to ensure all reasonable efforts are applied to ensure the accuracy of their data.

In January commission staff performed an additional round of outreach to assist municipalities in getting their data completely entered and reconciled for the 2020 election cycle, with special focus on the 2020 General Election. Staff were assigned specific municipalities in an attempt to help them complete their reconciliation reporting so upcoming federal reporting requirements would have the most accurate and complete data possible. Nearly 550 additional municipalities were able to complete their reconciliation for the 2020 General Election as a result of this additional outreach.

The Election Day Registration (EDR) Postcard Statistics reporting is required to be initially reported within 90 days after an election and then updated monthly until there is a full accounting of all EDR postcards. As of February 22, 2021, we are monitoring the following elections and working with 194 municipalities still pending to get their data entry complete for the Election Day Registration Postcard Statistics reporting. The initial reporting of the EDR Postcard Statistics for the 2021 Spring Primary is due on May 17, 2021.

5. Election Administration and Voting Survey (EAVS)

Commission staff are completing the Election Administration and Voting Survey (EAVS) for the U.S. Election Assistance Commission (EAC) that is due after every General Election. This report covers data regarding registrations, absentee ballots, provisional ballots, voter participation, election equipment, polling places and data specific to UOCAVA voters in these areas such as the usage of the Federal Write-in Absentee Ballot, or FWAB. Along with this survey, the team has also worked to gather data for the report put together by the Federal Voting Assistance Program (FVAP) along with The Council of State Governments (CSG) which collects voting statistics specifically regarding UOCAVA voters. The final submission to FVAP was submitted on February 5 and the final EAVS submission to EAC is expected to be submitted no later than March 1, 2021.

The completion of organizing the data for these reports requires an extensive process involving a team of 3 staff members and an IT developer. The staff work to determine what logic is required to pull the data needed to fill the data points being collected and create a matrix of all of this logic for the IT developer to use in pulling the data from the database. Once data sets are created, they are reviewed for accuracy and completeness. Data quality is largely dependent on the accuracy and completeness of the data entered by the WisVote clerk users. Any modifications to logic are made and the process continues until all data is extracted and ready to submit.

The team starts working on this process in December following a General Election. The process did experience a few delays due to other needs across the agency for the developer's time, but we are still on track to complete it by EAC's final deadline of March 1. The EAC publishes their data and findings collected from all states and territories in a booklet published later in the year.

6. Badger Books

Since the last update offered, Badger Books were successfully used in over 70 municipalities in three statewide elections, including the November General Election. Badger Books continue to be well received by election officials and voters in the municipalities where they are used. In the case of municipal clerks, Badger Books offer the opportunity to record participation more accurately and quickly, process in-person voters and absentee ballots more efficiently, and more readily identify issues with data quality when the election information is uploaded to WisVote.

Due to its successes, there is an increased interest to join the Badger Book program. To ensure that it continues to grow sustainably in a way that supports new and current users, staff will be using the first few months of 2021 to focus on several key aspects of the program. A primary focus will be on improving the user interface of both the Badger Book application as used by voters and poll workers and the WisVote-based Badger Book components, which are used by clerks. This includes development and usability testing on new features designed to improve the absentee processing workflow and various WisVote functionalities designed to enhance data quality pre- and post-election.

Additionally, staff are currently researching future hardware options and exploring third-party support models to ensure that participating municipalities are serviced appropriately when experiencing hardware issues. Training is another significant component in successful growth, and staff are using this time to refresh virtual training options, prepare for in-person training, and research alternatives to WEC-led training for newly onboarded municipalities.

7. Four-Year Voter Record Maintenance Mailing

In June of 2021, the Commission is required to perform what is commonly referred to as a four-year voter list maintenance. Wis. Stat. §6.50(1) directs that, “No later than June 15 following each general election, the Wisconsin Elections Commission shall examine voter registration records for each municipality and identify each elector who has not voted in the previous four years if qualified to do so during that entire period and shall mail a notice to the elector. The form of the notice shall substantially comply with Notice of Suspension of Registration and Application for Continuation of Registration language specified in Wis. Stat. §6.50(1). A copy of the previous notice is depicted at the end of this section.

Voters have 30 days to respond to the “Notice of Suspension of Registration” and to request continuation of their registration at their current voting address. Voters can accomplish this in several ways. The voter can sign and return the “Application for Continuation of Registration” section of the “Notice of Suspension of Registration” postcard. A written request for continuation of registration can be made in person or sent by mail. A voter whose name or address has changed must re-register. The postcard directs voters who believe they received it in error to contact their municipal clerk or the Commission and provides voters with the Commission’s toll-free number.

The Postal Service will return undeliverable postcards to municipal clerks. Clerks record the returned undeliverable postcard in the voter’s WisVote record and change the status of the voter record from active to inactive. See Wis. Stat. §6.50(2g).

The deadline for voters to respond with an “Application for Continuation of Registration” is July 15, 2021. Voters who have not requested continuation, or whose “Notice of Suspension of Registration” were returned to the clerks as undeliverable by July 15, 2021, will have their voter status changed to inactive, and the voter will need to register in order to vote in any future election. See Wis. Stat. §6.50(2).

7. Four-Year Voter Record Maintenance Mailing (continued)

No later than August 1, 2021 the commission must post the following statistics on its website:

- (a) The total number of notices mailed.
- (b) The number of notices returned as undeliverable.
- (c) The number of notices that were returned requesting continuation of registration.
- (d) The number of notices that were returned requesting cancellation of registration.
- (e) The number of notices returned with an indication that the named elector is deceased.
- (f) The number of notices that were not returned.
- (d) The number of electors who received notices and whose status changed from eligible to ineligible. Wis. Stat. §6.50(2r).

2021 Four-Year Voter Record Maintenance Timeline

April 12, 2021 – April 23, 2021	Finalize Mailing Design with DOA printing.
May 6, 2021 – May 14, 2021	Deadline for municipal clerks to enter participation for the Spring Election Wis. Stat § 6.275 The Commission IT staff creates the list of voters identified as not having voted in 4 years after this date. The goal is to get the this to DOA printing 5-6 weeks prior to the deadline for mailing the Notices of Suspension.
June 15, 2021	The Notices of Suspension of Registration Mailing is sent. Wis. Stat. §6.50(1)
June 15, 2021 – July 15, 2021	Clerks deactivate voter records for notices returned as undeliverable and update the status of voters who request continuation of registrations from Active – Suspended to Active – Registered. Wis. Stat. §6.50(2r)
July 15, 2021 (30 days after the date of the mailing)	The Commission IT staff runs an automated job to deactivate any voters who have not requested a Continuation of Registration. Wis. Stat. §6.50(2)
August 1, 2021	The Commission publishes the required statistics. Wis. Stat. §6.50(2r)



7. Four-Year Voter Record Maintenance Timeline (continued)

4-Year Maintenance Mailer Format (2019 Version Shown)

Exterior Side 1 (Voter Address)




Laurel Clark VILLAGE OF MENOMONEE FALLS W156N8480 PILGRIM RD MENOMONEE FLS, WI 53051-3140		PRSRFT FIRST CLASS US POSTAGE PAID MADISON WI PERMIT NO 1369
RETURN SERVICE REQUESTED		
OFFICIAL VOTER REGISTRATION NOTICE		
 DAVID CHESTERFIELD N85W16138 APPLETON AVE MENOMONEE FALLS, WI 53051		

Exterior Side 2 (Notice)



	State of Wisconsin Official Notice	
<p>Election records show you have not voted in the last four years. Stay registered to vote by choosing one of these two options:</p> <ol style="list-style-type: none">1. If your address hasn't changed, sign and return the other half of this card; or2. If your address is different, visit myvote.wi.gov to update your voter information. <p>Need Help? Call Wisconsin Elections Commission 1-866-868-3947.</p> <p>¿Necesitas ayuda en Español? Llama a su secretario municipal o visita myvote.wi.gov/es-es/</p> <p><small>Statutory Notice of Suspension of Registration. You are hereby notified that your voter registration will be suspended, according to state law, for failure to vote within the previous 4-year period, unless you apply for continuation of your registration within 30 days. You may continue your registration by signing the attached statement and returning it to the office of the municipal clerk by mail or in person. Wis. Stat. sec 6.50(1).</small></p>		

7. Four-Year Voter Record Maintenance Timeline (continued)

Interior Side 3 (Optional Certification)

	Keep Me Registered To Vote	
Still at the same address? You may use this card to stay registered.		
<ol style="list-style-type: none">1. Sign the statement below.2. Return this card to your municipal clerk's office by mail or in-person by July 31, 2019.		
I hereby certify that I still reside at the address listed below and want to stay registered to vote in Wisconsin.		
Sign X _____ Date ____ / ____ / 2019		
DAVID CHESTERFIELD N85W16138 APPLETON AVE MENOMONEE FALLS, WI 53051-3047	CITY OF WAUKESHA - WAUKESHA COUNTY 0009240857  5 0 0 0 1 6 7 5 4 6	

Interior Side 4 (Return Address to Clerk)¹

	Return Postage Required
 Laurel Clark VILLAGE OF MENOMONEE FALLS W156N8480 PILGRIM RD MENOMONEE FLS, WI 53051-3140 	

¹ Note that the USPS does not allow the use of a business reply mail permit when returning to addresses other than the permit holder's address of record.

8. 2021 Redistricting

WisVote staff have begun preparing our systems for the redistricting process. Currently, staff have been working on adjusting and fixing address location data, as well as marking certain addresses for clerk review. Staff are planning to have clerks begin to look at these issues after the April election.

Census block data from the U.S. Census Bureau has been delayed and the latest information has that data being sent to the states between August and September of this year. Normally, that data would be arriving in February or March, so this is a significant delay to the process. Once block data is received, municipalities and counties can begin the redistricting process, but staff has not received any additional information on timeline changes from Census or the Legislative Technology Services Bureau.

9. MyVote Wisconsin

MyVote is the Wisconsin Elections Commission's primary on-line voter information tool. The website allows voters to register online during open registration, start the registration process during closed registration, request an absentee ballot, find their polling places, view sample ballots, track their absentee and provisional ballots, and more. MyVote is a critical resource for both Wisconsin voters and local election officials.

The site has also had several informational updates during the 2020 election cycle to provide voters with accurate and up-to-date information in a time where guidance and information changed at a rapid pace. Commission staff added additional information about absentee ballot delivery options, both general information and jurisdiction-specific, short videos describing the absentee voting process from start to finish, how ballots are counted, an FAQ about absentee voting, and revamped the absentee tracking process to make it easier to find and use.

MyVote usage has shown steady increases over the last several years as voters have become more aware of the site. The unique circumstances of 2020 greatly increased site use, breaking all previous records for traffic. Prior to 2020, the highest single day events were the 2016 Presidential Preference Primary and 2018 General Election with over 170,000 users for each day. The 2020 Presidential Preference Primary and 2020 General Election both exceeded this mark, with the General Election clearing 300,000 users.

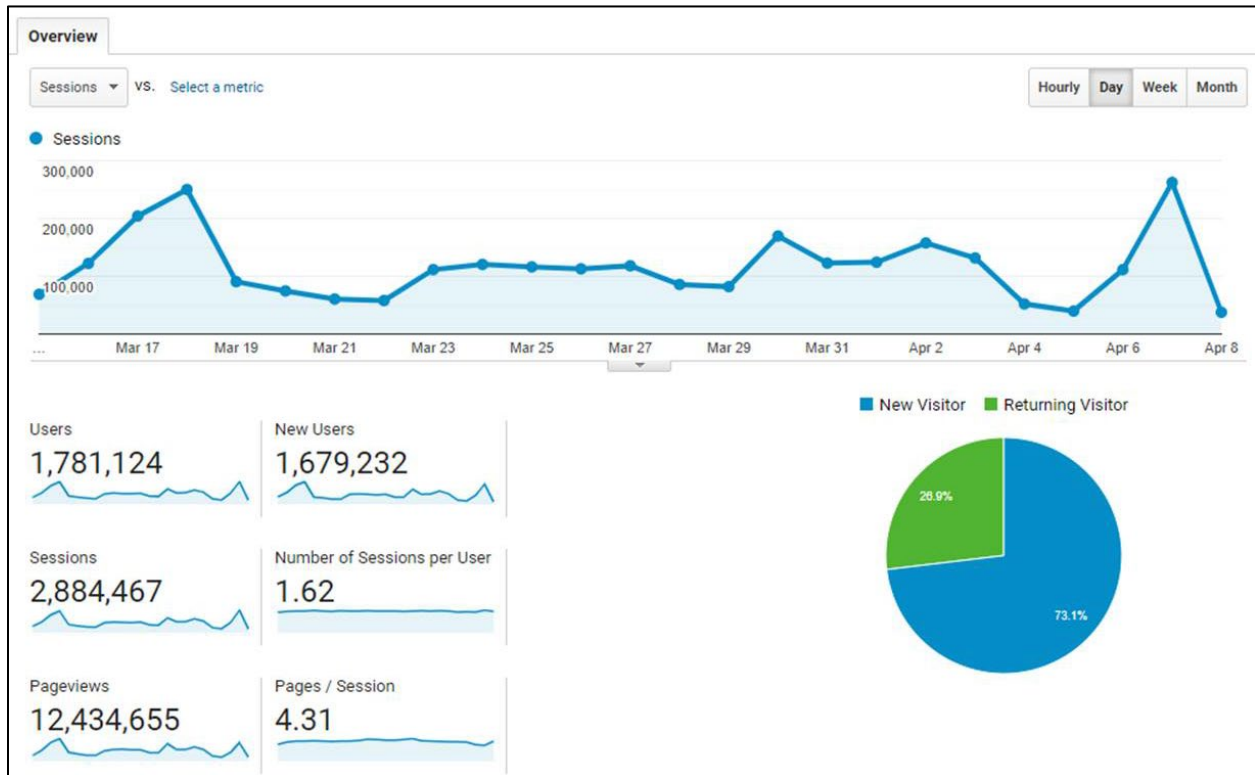
The MyVote website also sustained usage throughout 2020. In previous years, election days have been the high point of public usage of the site. In 2020 the highest usage, and new record high, was the day after the General Election, with totals exceeding November 3rd usage by approximately 8%. In the run-up to the General Election, MyVote saw sustained daily usage that was in excess of what we would expect during an election day in previous years. Along with this sustained usage, the site saw several surges in usage that corresponded to voter registration and absentee request deadlines. The MyVote site handled the increased traffic, both sustained and surge, with no major issues or outages.

With the shorter 2021 election cycle, overall MyVote usage levels, while still elevated, are beginning to return to what could be considered historical norms for the site. The February 16, 2021 Spring Primary still had election day usage levels higher than almost all other elections, but post-election activity has quickly returned to below the pre-election numbers. One small quirk in the 2021 data is there are times where roughly 30% of the site traffic is from Peru. This is related to a national election being held on April 11th in that country. The MyVote Wisconsin website routinely sees high traffic from other countries holding national elections.

Spring Election and Presidential Preference Primary usage history:

9. MyVote Wisconsin (continued)

Spring Election and Presidential Preference Primary usage history:



10. Accessibility

Accessibility Advisory Committee

The Accessibility Advisory Committee most recently met on Thursday, February 25 from 9am to 12pm via video conference. The Committee discussed Special Voting Deputies in care facilities, the accessibility supply program, Access Elections website updates, and the plan for April Polling Accessibility Place Reviews.

Accessibility Budget and Supply Program

The accessibility budget has approximately \$14,000 remaining for FY21. WEC staff plan on continuing to replenish accessibility supplies as needed to help clerks prepare for 2022 elections. As Accessibility Polling Place Reviews were not conducted in the last three elections, staff are instead heavily promoting the Accessibility Supply Program, specifically around curbside voting signage.

In early August, \$3,332 of safety/traffic cones and doorbells were ordered for the August election and then in late August, \$17,298 of supplies were ordered to replenish accessible voting resources, including curbside voting signs. Clerks reported a shortage of safety/traffic cones after the November election, so in December, 600 cones were ordered at a total of \$5,370. In June and July 2020, 1429 supply packages were sent to 86 municipalities. Between August and November 1042 supply packages were sent to 92 municipalities. To date this year, 47 supply packages were sent to 6 municipalities. In total, 314 curbside signs were delivered since June.

10. Accessibility (continued)

Polling Place Accessibility Reviews (Formally known as “Audits”)

WEC staff recommend continuing to suspend polling place accessibility reviews for the April Spring Election due to safety concerns with COVID-19. WEC staff will instead prepare for a robust Polling Place Accessibility Review Program to resume in 2022 with visits across the State. In lieu of reviews this April, Commission staff plan to continue to promote curbside voting guidance and signage, accessibility self-assessments done by clerks, and training opportunities for local officials. Prior to the November election, WEC staff partnered with local disability advocacy organizations to conduct a webinar on polling place set-up and plan to continue partnerships and seek out training opportunities in 2021.

Braille Ballots

To promote options for accessible absentee voting, many local disability advocacy organizations recommended creating a braille ballot for voters to request. WEC staff have identified two vendors that are able to print braille ballots for clerks with a two-to-three-week notice. WEC staff have ordered braille ballots from both vendors to create training and samples for clerks on how to order, send, and process braille ballots. WEC staff are working with the disability advocacy organizations to promote the option to voters and plan on uploading information for the public on the Elections website.

Accessibility Concern Form

Since May 2020, there have been 26 accessibility concerns reported using the “Report an Accessibility Concern” form on the agency website. Below are the types of complaints received:

- Polling place physical accessibility (5)
- Poll workers not wearing masks (4)
- Poll workers requiring voters to wear masks (4)
- Town of Hudson caucus (4)
- Curbside voting (3)
- Website accessibility (2)
- Clerk training around disability (1)
- Sanitizing headphones (1)
- Wisconsin’s lack of screen-reader accessible ballot (1)
- Difficulty obtaining a witness (1)

11. Legislative Update

With a new session of the Wisconsin Legislature beginning, Elections Administration staff will monitor and provide ongoing analysis of legislation relevant to WEC. Below are bills recently introduced and the current status:

- Senate Bill 21/Assembly Bill 21. This bill relates to aids to counties and municipalities for certain special election costs. This bill is currently in both the Senate Committee on Elections, Election Process Reform and Ethics and the Assembly Committee on Campaigns and Elections.
- Senate Bill 61/Assembly Bill 35. This bill relates to the method of selecting presidential electors. This bill is currently in both the Senate Committee on Elections, Election Process Reform and Ethics and the Assembly Committee on Campaigns and Elections.
- Senate Bill 52/Assembly Bill 51. This bill relates to requiring public notice of noncandidacy for local elected officials. This bill is currently in both the Senate Committee on Elections, Election Process Reform and Ethics and the Assembly Committee on Campaigns and Elections.
- Senate Bill 102/Assembly Bill 94. This bill would allow a pupil enrolled in a home-based private educational program to serve as an election inspector. This bill is currently in both the Senate Committee on Elections, Election Process Reform and Ethics and the Assembly Committee on Campaigns and Elections.

12. Complaints

Elections Administration staff and Staff Counsel have continued to process and resolve formal complaints related to the actions of local election officials, as well as informal inquiries submitted by voters and the public. Since January 1, 2021, the Commission has received fifteen Wis. Stat. § 5.06 and § 5.05 complaints, which is a significant increase over the 2020 numbers which were already a substantial increase from previous years.

13. Voting Equipment

During the current reporting period, the primary focus of staff was the planning and execution of the 2020 post-election voting equipment audit. Audit findings were presented to the Commission at the February 3, 2021 meeting. At that meeting, the Commission directed staff to further investigate the overvote totals in counties utilizing the ImageCast Evolution tabulator. Full analysis is included in this packet under separate cover.

Staff is currently working with voting equipment vendors to update the list of voting equipment used throughout Wisconsin. This list is updated regularly to provide both the public and WEC with the clearest picture of voting equipment used in the state.

Staff is also working with one vendor, ES&S, on a single engineering change order (ECO). The submitted ECO seeks *de minimis* changes to a previously approved voting system. Upon completion of analysis of ECO documentation, staff recommendation will be forwarded to Administrator Wolfe. The last engineering change order that was approved was ClearBallot SW-7679 which was considered a *de minimis* change to that system.

13. Voting Equipment (continued)

Finally, staff is in the preliminary phases of staging a voting equipment certification test in response to two applications for certification received in 2020. Dominion Voting Systems and Hart Intercivic have each submitted applications for state testing of their federally certified systems. Dominion Voting Systems currently has one system approved for use in Wisconsin, Democracy Suite 4.14. Hart Intercivic is not currently certified for use in the state.

14. Communications Report

Between June 1, 2020, and February 19, 2021, the Wisconsin Elections Commission continued to face unprecedented communications challenges that started in the first quarter of 2020 with the COVID-19 pandemic. Those challenges grew during the August 2020 Partisan Primary and the November 2020 Spring Election and Presidential Preference Primary produced a flood of communications with voters, local election officials, other state and federal agencies involved in the pandemic emergency response, legislative offices and the news media. While the pandemic and the April 2020 election initially put Wisconsin elections in the national spotlight, Wisconsin's status as a swing state, new and ongoing litigation, a partial recount, controversy at Commission meetings, and other events kept us there. During this period, the Public Information Officer engaged in the following activities in furtherance of the Commission's mission:

Voter Communications: The PIO worked on several projects designed to communicate with voters about how to participate in elections during the pandemic. These included the public education program focused on absentee voting, which included seven short videos, two fact sheets, web pages, social media posts, news releases and other materials for local clerks. The 2020 absentee education program covered all aspects of the absentee process, from the initial request to returning a ballot. We also educated voters and the media about what to expect on Election Night due to the high volume of absentee ballots and how that would likely affect when results would be reported. While it is clear that some voters did not get the message that late results were expected and normal in such a high-turnout election, having that educational material proved useful to have post-election when voters contacted us with questions about why complete unofficial results took so long. The page where those assets are displayed is here: <https://elections.wi.gov/absentee>. The work would not have been possible without our advertising agency, KW2, and WEC staff members who reviewed scripts, storyboards and videos prior to our final approval of KW2's products.

Many voters communicated back to the Commission about voting issues during this time. Thousands of voters from across the political spectrum reached out by telephone, email, website comment forms and social media, often driven by political, marketing and media campaigns. At times, these campaigns caused our telephone lines to be overwhelmed. Unfortunately, staff was unable to respond to many of these messages and focused on assisting Wisconsin voters who staff could identify as having specific concerns or questions about something they had experienced or witnessed themselves, as opposed to something they had heard about.

Communication with Local Election Officials: The pandemic and the media attention on the General Election continued to generate high levels of communication with municipal and county clerks, much of it flowing through the agency's website. The PIO worked with other Website Team members to update and expand content for these pages. The PIO also consulted with several county and municipal clerks on specific election-related communications challenges they faced in their communities.

Media: Local, state, national and international media outlets continued to show strong interest in Wisconsin after the Spring Election cycle, focused largely on whether the problems in April 2020 would extend to the Partisan Primary and General Election. Absentee voting and ballot mailing questions and concerns were

14. Communications Report (continued)

frequent subjects of information and interview requests. Other frequent topics included poll worker shortages and our cooperation with the Wisconsin National Guard, ongoing litigation, the potential for physical threats, and cyber security. After the election, topics focused on unfounded claims how Wisconsin residents voted and how the ballots were counted, as well as the recount, certification and the Electoral College.

During this time, the PIO and the Administrator conducted hundreds of media interviews. We also spent significant amounts of time vetting explanatory journalism projects from numerous media outlets designed to explain Wisconsin's voting processes to ensure they were accurately communicating our deadlines and statutes. Starting in September, the Administrator also held weekly media availabilities via Zoom on topics coordinated with windows and deadlines for voters to participate in the election by registering, requesting absentee ballots, returning ballots, voting absentee in person and voting on Election Day. Post-election media availabilities focused on debunking misinformation and discussing plans for partial recounts and for certification of the election results. These video webinars generated strong media interest and were at times broadcast live around the world on several cable news stations.

In February, the PIO was invited to moderate a panel of reporters discussing election coverage and communications for the National Association of State Election Directors meeting.

15. Elections Help Desk/Customer Service Center

The Elections Help Desk staff is supporting more than 2,000 active WisVote users while also answering calls and emails from the public and election officials. Staff is monitoring state enterprise network and data center changes and status, processing Voter cancelations and Voter Address Verification postcards. Help Desk staff has been serving on and assisting various project teams. Staff continues to maintain WisVote user and clerk listserv email lists and contact information, administering Elections Commission's Exchange email system. The staff continues to administer the WisVote Active Directory system and the Elections Learning Center, maintaining system security. The majority of contacts were regarding preparations for the November General Election; post Election processes; Absentee mail and processing; MyVote assistance along with a significant amount of commentary from the public.

Customer Service Call Volume 608-266-8005 608-261-2028

August 2020	6,182
September 2020	9,648
October 2020	13,595
November 2020	7,150
December 2020	1,892
January 2021	1,893
Total for Reporting Period	40,360

15. Elections Help Desk/Customer Service Center (continued)

**Customer Service Email Volume
 elections@wi.gov**

September 2020	15,392
October 2020	16,833
November 2020	13,987
December 2020	4,678
January 2021	3,058
Total for Reporting Period	53,948

Address Verification Postcards Mailed

September 2020	170,515
October 2020	107,744
November 2020	207,859
December 2020	12,077
January 2021	2,801
Total for Reporting Period	500,996

16. Financial Services

- Since our last Staff Update, the financial staff worked to close out our state fiscal year 2020 and begin fiscal year 2021 including performing all year-end close queries, inquiries, and reports and conducting necessary adjusting entries to resolve any discrepancies; Wisconsin’s state fiscal year runs July 1 through June 30.
- On June 26, 2020, financial staff compiled and submitted to the U.S. Election Assistance Commission (EAC) our program staff’s narrative for the 2020 Election Security grant, describing both immediate improvements/activities and longer-term activities leading up to the 2024 election and beyond.
- On August 10, 2020, staff setup our agency’s account in the U.S. Government’s Payment Management System (PMS), the new system the EAC will use for annual and semiannual Federal Financial Reporting (FFR) submissions.
- On August 20, 2020, after thorough reconciliations, staff verified to the Wisconsin State Controller’s Office (SCO) that all FY20 expenditures and revenues for our agency’s appropriations were correct.
- On August 31, 2020, staff submitted to the EAC our CARES grant 20-day post-election financial and narrative Progress Report following the August 11 election.
- On September 8, 2020, staff submitted to the SCO our annual Accounts Receivable Report.
- On September 15, 2020, staff submitted our SCO GAAP Accrual Entry FY2020 Report.

16. Financial Services (continued)

- On September 25, 2020, staff submitted to the SCO our FY2020 Program Revenue and Segregated Revenue Overdraft Report.
- On September 28, 2020, staff completed the annually required Payment Card Industry (PCI) Compliance Training.
- On September 29, 2020, staff submitted to SCO our FY 2020 Prompt Payment Interest Report.
- On October 6, 2020, staff submitted to SCO an inventory our COVID-19 Funds Report.
- On October 7 and 13, 2020, staff participated in webinar trainings with the EAC to better understand creating an account in the new PMS reporting system.
- On October 9, 2020, staff submitted to the EAC our Commission-approved budget for the combined Election Security grants.
- On October 30, 2020, staff updated our agency registration in the U.S. Government's System for Award Management (SAM).
- On November 20, 2020, staff submitted to the SCO our FY2020 Schedule of Expenditures of Federal Awards (SEFA).
- On November 20, 2020, staff submitted to DOA our Coronavirus Relief Fund (CRF) Report.
- On November 23, 2020, staff submitted to the EAC our CARES 20-day post-election financial and narrative Progress Report following the November 3 election.
- On November 23, 2020, staff submitted to the SCO our COVID-19 Funds Report.
- On December 1, 2020, staff closed the USPS business permit that was used for the CARES absentee mailer.
- On December 1 and 3, 2020, staff participated in conference calls with the EAC to better understand submitted the FFR in the new PMS reporting system.
- On December 8, 2020, staff submitted to the Wisconsin Legislative Fiscal Bureau (LFB) a report on the expenditures to implement Act 23.
- On December 17, 2020, staff submitted the online attestation of our Payment Card Industry (PCI) Compliance.
- On December 27, 2020, staff submitted to the EAC our Election Security grant annual Federal Financial Report (FFR) via the new Payment Management System (PMS).
- On December 28, 2020, staff submitted to the EAC our Election Security grant financial and narrative Progress Report.

16. Financial Services (continued)

- On December 29, 2020, staff verified to the DOA that our Coronavirus Relief Fund Treasury Expenditure Reporting Data was complete as reported.
- On January 8, 2020, staff submitted to SCO our 1099 Review Report.
- On February 2, 2020, staff submitted to SCO our Speed Chart and Speed Type Usage Report.
- In addition, staff has performed the following monthly:
 - Staff has continued to perform and submit to the SCO scheduled month-end close queries, inquiries, and reports. Staff conducted necessary adjusting entries to resolve any discrepancies.
 - Staff has continued to validate Wisconsin Department of Administration (DOA)'s monthly Diverse Spend Reports.
 - Staff has continued to complete and submit to the SCO monthly COVID cost tracking reports.
 - Staff has continued to participate in monthly DOA user group webinars pertaining to Project Costing and Accounts Receivable and Billing.
 - Staff has continued to participate in the Financial Leadership Council meetings at SCO.
 - In June through December 2020, staff continued to submit to SCO monthly Federal Funding Accountability and Transparency Act (FFATA) reports relating to our subgrants.

17. Procurements

The following twenty-seven Purchase Orders totaling \$2,103,275.01 have been processed since the June 10, 2020 Commission meeting:

- Two Purchase Orders totaling \$330,109.20 were written to DI & Associates/Spherion for temporary workers to help with phones, emails, and projects for the next several months.
- Five Purchase Orders totaling \$725,200.00 were written to TAPFIN for five IT Developers.
- A \$237.59 Purchase Order was written to SHI International Corporation for Drupal 2FA mini orange module, with premium support, for 10 users.
- A \$447.10 Purchase Order was written to Insight Public Sector for Yubico Yubikey.
- A \$79,438.00 Purchase Order was written to Beyond Vision/Wiscraft Call Center for assistance with incoming phone calls and emails.

17. Procurements (continued)

- A \$33,685.50 Purchase Order was written to SHI International Corporation for a one-year subscription of New Relic.
- A \$878.40 Purchase Order was written to SHI International Corporation for Acrobat Pro DC subscription renewals.
- A \$96,663.70 Purchase Order was written to Knupp & Watson & Wallman (KW2) for CARES absentee voting process design.
- A \$48,735.79 Purchase Order was written to Knupp & Watson & Wallman (KW2) for Election Security market research and market design.
- A \$1,935.02 Purchase Order was written to SHI International Corporation for Photoshop, Acrobat, and InDesign.
- A \$857.41 Purchase Order was written to Cenvo for envelopes and the printing of those envelopes.
- A \$63,726.00 Purchase Order was written to Insight Public Sector for OPSWAT security monitoring.
- A \$12,968.75 Purchase Order was written to SHI International Corporation for Smarty Streets GSI software.
- A \$382.02 Purchase Order was written to SHI International Corporation for Acrobat Pro DC.
- A \$98,694.81 Purchase Order was written to SHI International Corporation for Elasticsearch Service (ESS) annual with Data Transfer & Snapshot Storage (DTS).
- A \$149,105.00 Purchase Order was written to Kforce Inc. for temporary workers data entry for the CARES absentee ballot mailer.
- A \$209,817.86 Purchase Order was written to Protiviti Government Services/Robert Half for temporary workers data entry for the CARES absentee ballot mailer.
- A \$2,600.36 Purchase Order was written to SHI International Corporation for LastPass password manager.
- A \$98,968.00 Purchase Order was written to TAPFIN for a continuation of an IT Developer through the end of our fiscal year.
- A \$3,750.00 Purchase Order was written to AT&T Mobility for RCM Premium, our RAVE Alert System.
- A \$41,074.50 Purchase Order was written to DI & Associates for the continuation of a temporary employee through the end of our fiscal year.

17. Procurements (continued)

- A \$104,000.00 Purchase Order was written to TAPFIN for a continuation of an IT Developer through the end of our fiscal year.

All purchases accurately followed the Wisconsin State Procurement Process.

18. Meetings and Presentations

WEC staff attended the following events since the December 1, 2020 Commission meeting.

December 8, 2020	Meeting with USPS District and Area Managers
December 10, 2020	National States Geographic Information Council Conference
December 11, 2020	National Association of State Election Directors Meeting
December 18, 2020	DHS Cybersecurity and Infrastructure Security Agency Meeting
December 18, 2020	National Association of Secretaries of State Tech-Talk for IT Staff
January 5, 2021	Meeting with USPS District and Area Managers
January 6, 2021	Information Technology Directors Council Meeting
January 7, 2021	Legislative Technical Services Bureau Meeting (Redistricting)
January 19, 2021	Meeting with USPS District and Area Managers
January 26, 2021	Elections Information Sharing and Assistance Center (EI-ISAC) Meeting
February 1-4, 2021	National Association of State Election Directors Annual Conference
February 2, 2021	Wisconsin Information Sharing and Assistance Center (WI-ISAC)
February 2, 2021	Meeting with USPS District and Area Managers
February 11, 2021	ERIC Winter Board Meeting
February 15-18, 2021	Wisconsin Land Information Association 2021 Conference
February 19, 2021	ERIC 2021 Kick Off Conference
February 23, 2021	Elections Information Sharing and Assistance Center (EI-ISAC) Meeting
February 24, 2021	National Association of Secretaries of State Cybersecurity Review

19. Petition to Use Paper Ballots

Ahead of the February 2021 election Two Rivers submitted a petition to use paper ballots which was approved by Administrator Wolfe.

ATTACHMENT #1

Wisconsin Elections Commission’s Training Initiatives
6/10/2020 – 3/2/2021

Training Type	Description	Class Duration	Target Audience	Number of Classes	Number of Students
Municipal Clerk	2005 Wisconsin Act 451 requires that all municipal clerks attend a state-sponsored training program at least once every 2 years. MCT Core class is available in the WisVote Learning Center.	3 hours	All municipal clerks are required to take the training; other staff may attend. Clerks may attend refresher once per 2-year term.	In-Person: 0 16-section presentation with quizzes	0 120
Chief Inspector	Required training for new Chief Inspectors before they can serve as an election official for a municipality during an election. CIT Baseline class is available in the WisVote Learning Center and on the Commission website.	2-3 hours	Election workers for a municipality. Current chiefs and clerks may attend refresher once per 2-year term.	In-Person: 8 7-section presentation with self-evaluation	120 290
Election Administration and WisVote Training Webinar Series	Series of programs designed to keep local government officials up to date on the administration of elections in Wisconsin.	60 + minute webinar training sessions hosted and conducted by Commission staff.	County and municipal clerks, chief inspectors, poll workers, election registration officials, and school district clerks.	Election Administration Training Webinars: 14; WisVote Training Webinars: 7	50 – 500 per live webinar; posted to website for clerks to use on-demand.

ATTACHMENT #1

Wisconsin Elections Commission’s Training Initiatives
6/10/2020 – 3/2/2021

WisVote Training	Online training in core WisVote functions – how to navigate the system, how to add voters, how to set up elections and print poll books.	Varies	New users of the WisVote application software.	Online	Not tracked
Clerk Conferences	September 28, 2020: WIAC Student-Athletes Webinar September 30, 2020: Clerks Institute Virtual Conference with Ethics Commission October 13, 2020: Wisconsin Towns Association Virtual Annual Conference				



Wisconsin Elections Commission

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DATE: For the March 2, 2021 Commission Meeting

TO: Commissioners, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator

SUBJECT: Commission Legislative Agenda

Historically, the Wisconsin Elections Commission has adopted a legislative agenda for each year of a legislative session. The Commission's legislative agendas have focused solely on technical changes and drafting errors in election provisions. Most recently, at the meeting of December 3, 2018, the Commission adopted a legislative agenda, and on March 11, 2019, the Commission met to add additional items to their agenda. In total, the Commission adopted more than 70 technical, clean-up items over the last three years. For the Commission's reference, both of previous Commission memos outlining the last two legislative agendas are included as attachments. In 2019, both houses of the Wisconsin Legislature drafted bills which incorporated the Commission's legislative agenda into Senate Bill 242/Assembly Bill 247, Senate Bill 241/Assembly Bill 246, and Senate Bill 240/Assembly Bill 245. The bills received a hearing in the senate and assembly, but ultimately were not signed into law. During the legislative drafting process, the Legislature asked for more detail about each of the Commission's legislative agenda items. In response, WEC staff drafted three memos outlining the background of each suggested change. Those memos are also included as attachments to this document.

As you can see in the Commission's previous legislative agendas, the Commission has historically adopted technical items pointing out drafting errors or timeline conflicts. The Commission has long taken the position that it is not a legislative body, and therefore, has not taken positions as a body on policy decisions or political positions related to elections. In those instances when Commissioners have had individual opinions about legislation, they have typically provided that policy and political feedback directly to legislators in their individual capacity, being careful to indicate that they are not speaking on behalf of the Commission as a whole. In instances when the legislator is seeking feedback on a bill or idea that the Commission has not taken a position on, the Administrator has met with legislators or appeared to testify at hearings to provide non-partisan, factual testimony for information only, often focused on the fiscal impact of a bill, the mechanics of implementation or potential conflicts with existing statutes.

For the 2021 session, staff recommends that the Commission continue its support of the previous legislative agendas from 2018 and 2019, and that the Commission also consider whether to add the four items listed below to the agenda. Adding an item to the Commission's legislative agenda requires at least four votes of the Commission. Without four votes to change the agenda, the agenda will remain unchanged from previous years. If the Commission adopts a legislative agenda at the March 2, 2021, meeting, a letter outlining the Commission's decision will be sent to Senate and Assembly minority and majority leadership as well as the chairs of the Senate and Assembly election committee. If a bill is introduced that incorporates an item from the Commission's legislative agenda, then the staff would work with the legislator to support those legislative changes and the Administrator would present testimony to the Legislature "in support" of the bill if invited to

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

testify. Two of the recommended items (SVD and Canvass Certification) do not suggest a specific fix to the Legislature, rather they point out that clarity is needed. In these instances, staff will continue to collect feedback from clerks and other subject matter experts that can be provided to the Legislature as information if asked for feedback on a specific solution the Legislature is proposing.

It is further recommended that if the Commission chooses to adopt these items as part of the legislative agenda, the letter expressing support would also include a statement that the Commission recommends that the technical clean up items remain part of stand alone bills and not be combined with other matters.

Commission staff is requesting feedback regarding the following four additional items for the legislative agenda and asks that the Commission consider adopting these items and adding them to the current legislative agenda.

1. Federal and State Absentee Ballot Deadline Issues (A/B Ballots)

Background: The Legislature may wish to address conflicting statutory deadlines to limit the necessity of A/B ballot scenarios when a federal contest is on the ballot in the spring.

Wis. Stat. § 7.15(1)(cm) states, “The clerk shall send or transmit an absentee ballot for the presidential preference primary to each elector who has requested that ballot no later than the 47th day before the presidential preference primary if the request is made before that day, or, if the request is not made before that day, within one business day of the time the request is received.”

This requirement is in addition to the 45-day deadline under federal law to send absentee ballots to all UOCAVA voters (military and overseas) prior to each federal election. For state and local elections, the deadline to send ballots to voters with an absentee application on file is 21 days before the election. This becomes an issue when the Spring Election and the Presidential Preference Vote occur on the same day – as it creates different deadlines for when ballots must be sent out. The 47-day and 45-day deadlines for sending ballots is prior to the certification deadline for the Spring Primary, therefore it is impossible to have a full ballot available to send that far out from the election.

This situation results in the A/B ballot scenario, with an “A” ballot being sent that only contains the Presidential Preference contest 47-days prior, and then the “B” ballot being sent no later than 21 days before the election which contains all contests on the ballot (federal, state, local).

In February 2020, the Commission conducted a special meeting and directed that “A” ballots should only be sent to military and overseas voters by the 47-day state deadline and the 45-day federal deadline; “A” ballots should not be sent to regular absentee voters with requests on file and clerks should wait to send the official (full) ballot by the 21-day deadline to regular absentee voters with requests on file.

Potential Legislative Agenda Item: The Legislature could consider changing the statute to direct clerks to send an “A” ballot only to military and overseas electors by the 45th day prior to the election, respond to any requests from military and overseas electors within one business day, and then send the full ballot to all voters with requests on file once it is available, but no later than 21 days prior to the election.

2. Special Elections – U.S. Senator and Representative in Congress

Background: The ordering of a special election to fill vacancies in U.S. Senate and House of Representative offices is the statutory duty of the Governor. However, Commission staff traditionally provide information to the Governor's office regarding timelines and specific conflicts that could occur if certain dates are selected. Commission staff have found that the special election statutes under Wis. Stat. § 8.50 can be difficult to navigate at times, and they sometimes mandate deadlines that do not allow sufficient time to canvass and certify primary results before ballots must be prepared and sent to military and overseas voters under federal law.

To ensure that state and federal laws can be complied with when vacancies in the offices of U.S. Senator or Representative in Congress occur and special elections are called to fill these vacancies, the Legislature could consider modifications to the current special election statutes.

Under current law, a vacancy in the office of U.S. Senator or Representative in Congress occurring prior to the second Tuesday in April in the year of the general election must be filled at a special primary and special election. A vacancy occurring in one of these offices between the second Tuesday in April and the second Tuesday in May in the year of the general election is filled at the partisan primary and general election. Wis. Stat. § 8.50(4)(b). Current law provides that a special primary be held four weeks before the day of the special election. However, if the election is held on the same day as the spring election, the special primary is held concurrently with the spring primary. Wis. Stat. § 8.50(2). Under current law, with regard to an election for a national office, the period between a special primary and special election or between the spring primary or spring election does not provide sufficient time to canvass and certify the primary results and prepare ballots to send to overseas voters as required by federal law.

Potential Legislative Agenda Item: To address these ballot timing issues, the Legislature could consider making the following changes in the process for filling vacancies in the offices of U.S. Senator or Representative in Congress:

For special elections to be held on the third Tuesday in May following the first day of the vacancy with a special primary to be held concurrently with the spring primary on the third Tuesday in February; at a special election to be held on the second Tuesday in August following the first day of the vacancy with a special primary to be held on the third Tuesday in May; at a special election to be held on the Tuesday after the first Monday in November following the first day of the vacancy with a special primary to be held on the second Tuesday in August. In addition to these changes, a November election would not be held in any year in which the general election is held for that office, but instead the vacancy is filled at the partisan primary and general election.

3. Canvass and Certification Timeframes

Background: Current law sets the certification timeline for various boards of canvass. The municipal board of canvassers must meet no later than 9:00 a.m. on the Monday after the election and complete their work no later than 4:00 p.m. on that same day. Wis. Stat. §§ 7.51(5)(b), 7.53(1)(a), (2)(d). The county board of canvass must convene no later than 9:00 a.m. on the Tuesday after the election and must deliver a statement of canvass to the WEC no later than nine days after each primary, 10 days after each partisan primary and other election and 14 days after a general election. Wis. Stat. § 7.60(5). The Commission conducts its canvass (within 10 days of commencement) of results received by the counties and must certify on or before the second Tuesday following a spring primary, the 15th day of May following a spring election, the third Wednesday following a partisan primary and the first day of December following a general election.

Some municipal clerks have expressed concern that the timeframe for the local level to conduct its canvass is much shorter than the timeframe allowed for the county and state to conduct its canvass and certify results.

Potential Legislative Agenda Item: The Legislature could consider amending some of the timing statutes related to canvass to allow municipalities additional time to conduct their canvass and certify results. Given the number of days allowed for the county and state to conduct its canvass work, the Legislature could consider adding days to the municipal level and subtracting days from the county and state level. This may also create an opportunity for municipal and county clerks to include additional checks on the process before election results are certified at each level of government, such as reviewing tally tapes for an unusual rate of overvotes or other anomalies.

4. Special Voting Deputies

Background: Current statutes are not clear on how to handle situations in which special voting deputies are not permitted to conduct voting at a care facility as outlined in Wis. Stat. § 6.875 due to a pandemic, facility-specific quarantine, natural disaster or some other reason. Commission staff have recommended that statutory changes to address this scenario could be included as part of the Commission’s legislative agenda.

While the Commission does not recommend specific statutory changes or language, it may wish to advise the legislature that a change is needed to address circumstances in which SVDs are not allowed to enter a care facility. The Commission has further directed WEC staff to research options, and to provide the Legislature with feedback from accessibility and ageing advocates, public health officials, and other subject matter experts on request. Commission staff would share this research with the legislature if/as requested.

Some ideas for consideration:

- The Legislature could consider adding language that would permit clerks to send ballots to residents of facilities in which SVD voting cannot be conducted without requiring two separate visits by an SVD. This may include clarifying what constitutes a “visit” to the facility in the event that a facility is not open to visitors, including SVDs.
- The Legislature could indicate the specific situations in which the direct sending of ballots to residents (similar to the provision currently contained in Wis. Stat. § 6.875(6)(e)) would be authorized and the timeframe upon which ballots should be sent to ensure residents are provided an opportunity to cast their ballot and have it returned on or before election day. Such a change would clarify that SVDs would not be required to show up at facilities to post a notice (initially) for voting or to conduct the voting itself (two visits) if they are only going to be denied by the facility due to one of the reasons outlined.
- The Legislature could include the method by which SVDs and clerks are notified that a facility will not allow SVDs to post a notice or conduct voting, and it could include a timeline by which that notification should occur – so that residents, administrators, SVDs and clerks are all aware that ballots will be sent to voters for a specific election because visitors are restricted due to an outbreak at a facility, for example.
- The Legislature could insert transparency provisions into the statutes so that the public, and potentially families of residents, are aware that voting will need to be conducted via mail due to the reason cited. While each clerks office and care facility will have different access to technology, remote observation, in a controlled, secured setting could also be contemplated.

- The Legislature could consider options where SVDs may be allowed to access a facility, but observers may not, and allow for an exception.
- The Legislature could consider repealing the prohibition on care facility staff assisting voters and allow clerks to deputize care facility staff as SVDs during quarantines or other emergencies.

Potential Legislative Agenda Item: While the Commission does not take a position on which statutory change should be pursued, it asks the Legislature to examine this issue and to clarify the law to specifically address how voters in SVD care facilities shall participate in voting in the event that the facility has a legitimate reason, such as medical quarantine, physical security concern, or natural disaster, to deny SVDs and/or observers from accessing the facility. WEC further asks that the Legislature examine not only election related laws, but the intersection with laws and accreditation standards that govern care facilities, and well as the medical privacy of voters.

Recommended Motion

The Commission adopts the additional items outlined above to be included in its legislative agenda and directs staff to work with the Legislature to support these statutory changes. The Commission further directs staff to submit a letter to legislative leadership outlining the Commission's decision and indicating that the Commission further recommends that WEC legislative agenda items remain stand-alone bills and that the technical changes should not be paired with other bills or items.