

Testimony of Michael Haas
Wisconsin Elections Commission

Senate Committee on Elections and Utilities
March 28, 2018

Room 300 Southeast, State Capitol
Public Hearing

Assembly Bill 947

Chairperson LeMahieu and Committee Members:

Thank you for the opportunity to provide testimony on Assembly Bill 947 and Senate Substitute Amendment 1. I am presenting this testimony on behalf of Interim Administrator Meagan Wolfe who is in Boston this week to participate in training related to election security tabletop exercises. I testified in support of AB 947 in the Assembly because it accomplished one of the significant items on the Commission's legislative agenda, specifically to clarify the treatment of Wisconsin voters who are out of the country temporarily and to bring it in compliance with federal law. The Commission has not reviewed the Substitute Amendment and therefore I am testifying for information only regarding that Amendment.

Regarding the original provisions of the bill, for several years, the Federal Voting Assistance Program of the U.S. Department of Defense (FVAP) has requested that Wisconsin revisit and revise its treatment of electors who are overseas temporarily and therefore have an intent to return to Wisconsin and retain their Wisconsin residency. These individuals may be short-term travelers who happen to be out of the country during an election period, or they may be working overseas for years at a time but always with an intent to return to Wisconsin. Under current law and under AB 947, these electors are entitled to cast votes for all offices on the ballot.

Another category of electors are considered permanent overseas electors. Those voters, or their parents, were previously residents of Wisconsin, and they have moved out of the country and no longer have an intent to return to the state. They are U.S. citizens and under both the current law and proposed bill, they have the right to vote for candidates for national offices, including President and Congress, but may not vote for state or local contests.

The federal government recognizes that states may make such distinctions regarding which offices permanent and temporary overseas electors may vote for. However, for several years FVAP has argued that federal law (specifically the Uniformed and Overseas Citizens Absentee Voting Act or UOCAVA) requires that both permanent and temporary

overseas electors be treated the same for purposes of electronic transmission of the ballot and use of the Federal Write-In Absentee Ballot (or FWAB). In recent years, the U.S. Department of Justice has become involved in our conversations with FVAP and has persisted in requesting that Wisconsin bring its statutes in line with federal law.

The general definition of “overseas elector” in the proposed bill describes permanent overseas electors. The proposed bill refers to temporary overseas electors as an overseas elector who qualifies as a resident of this state under Wis. Stat. Section 6.10. The proposed bill would accomplish two changes with respect to temporary overseas electors to satisfy the requests of federal officials:

1. Under Sections 10, 11 and 12 of the Substitute Amendment, temporary overseas electors would be able to receive an absentee ballot from their municipal clerk electronically. Currently only military and permanent overseas electors may receive a ballot electronically. Military and permanent overseas electors may receive a ballot by fax or email, or by downloading their ballot from the Commission’s MyVote Wisconsin website. While the proposed bill would permit temporary overseas electors to receive a ballot electronically, they would be limited to receiving ballots by fax or email and would not be able to receive ballots through the MyVote system. This is due to several factors related to the MyVote website as well as the requirement that temporary overseas electors must submit their photo ID to the municipal clerk, which military and permanent overseas electors are not required to do.
2. Under Section 11 of the Substitute Amendment, temporary overseas electors could use the Federal Write-In Absentee Ballot, or FWAB, which may currently be used only by military and permanent overseas electors. The FWAB is a back-up ballot which permits the voter to write in votes for all candidates for which the elector is entitled to vote. The FWAB can be obtained through the FVAP website if the elector believes they will not receive their official ballot in time to return it to their municipal clerk. If the official ballot is also submitted by the voter, the official ballot is counted and the FWAB is rejected.

Assembly Bill 947 makes another change which the Elections Commission has requested that the Legislature consider, by removing the requirement that an individual signing as a witness for a military elector or a permanent or temporary overseas elector be a U.S. citizen. Wisconsin is currently the only state which requires that such witnesses be a U.S. citizen. The requirement for a U.S. citizen to serve as a witness would remain for absentee voters who are not military or overseas electors.

We appreciate the work of the authors, legislative staff, and Legislative Council in working through the legal and administrative issues involved with the overseas electors portion of the bill. We believe that AB 947 would address the concerns raised by the federal government related to Wisconsin’s treatment of electors who are out of the country temporarily and our compliance with federal law.

Regarding the provisions related to calling special elections, which are Sections 27 through 30 of the Substitute Amendment, the bill would extend the timeline between the issuance of an order for a special election and the date of the special election. It would also prohibit special elections for legislative vacancies which occurred later than November of the year prior to the regular election for the office, and would require special primary elections to be scheduled eight weeks prior to a special election rather than four weeks under the current law. The Substitute Amendment would continue the four-week period between the nomination paper filing deadline and the date of a special primary election, if a primary becomes necessary. These are policy choices for the Legislature.

When an order is issued for a special election, ballots are typically printed one to two weeks after the filing deadline for nomination papers, depending upon whether challenges are filed and on printing schedules. After a primary election involving state or federal candidates, there usually is a delay of about two weeks before ballots are available because of the official canvass process and the window for a recount petition to be filed. Under the Substitute Amendment, ballots would likely be available around 43 days or less before the special election if there is a primary.

Under federal law, absentee ballots must be made available to military and overseas electors at least 45 days before an election that includes a federal office on the ballot. Current state law requires absentee ballots to be available to all absentee voters at least 47 days before the partisan primary or general election. There is no federal deadline for making absentee ballots available when there are only local or state offices on the ballot.

The changes to these timelines would also apply to special elections for local offices. However, vacancies in local elective offices can be filled initially by an appointment and then in some cases the governing body may also schedule a special election before the term expires.

Thank you for the opportunity to share our thoughts with you. I hope this testimony will help inform the Legislature's consideration of this bill. As always, we would be glad to answer questions and work with you to address any questions or issues related to the bill.

Respectfully submitted,



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