

WI BILL ANALYSIS: LRB-4680 & LRB-5269

February 4, 2022

Written By:

Matt Braynard, Executive Director

Ian Camacho, Research Director

The LAA Research Group

**LOOK
AHEAD
AMERICA**
THE VOTER INTEGRITY PROJECT

Bill Sponsors

Senators Kathy Bernier (R-Chippewa Falls), Robert Cowles (R-Green Bay), Alberta Darling (R-River Hills), and Duey Stroebel (R-Saukville) and Representatives Barb Dittrich (R-Oconomowoc), Cindi Duchow (R-Town of Delafield), and John Macco (R-Ledgeview) introduced four election reform bills on January 28, 2022.

Background

In 2020, faced with COVID-19, our country saw a dramatic increase in vote-by-mail ballots. Yet COVID-19 did not deter voters as approximately 155 million people voted, of which 69%, or 107 million voted by mail.^{1,2} This represents a significant increase from 2016, in which only 40% voted by mail. 2020 also brought about claims of voter and election fraud on a massive scale. While sensational levels of fraud seem unlikely, voter fraud indeed occurs.

Because of the hotly contested 2020 election, many states with both Republican and Democrat legislatures introduced a flurry of new bills aimed at changing election laws.

Senator Bernier and her colleagues sent a press release on January 28, 2022 stating that they based 4 bills on 18 items for consideration from the Legislation Audit Bureau (LAB) made to the Wisconsin Election Commission (WEC), as well as items suggested from the Wisconsin Institute of Law and Liberty (WILL), which looked into results of the 2020 General Election.³ Though these do not encompass every single item proposed by these groups, the 6 legislators claim that these will make a massive improvement and provide a step in the right direction.

Acknowledgements

@Mahican10 sent us the press filings and links for 2 of these bills publicly available. We thank her for her efforts involved in educating the general public about pending legislation not widely reported elsewhere.

¹ DeSilver, D. (2021, January 28). Turnout soared in 2020 as nearly two-thirds of eligible U.S. voters cast ballots for president. Pew Research Center. <https://www.pewresearch.org/fact-tank/2021/01/28/turnout-soared-in-2020-as-nearly-two-thirds-of-eligible-u-s-voters-cast-ballots-for-president/>

² U.S. Census Bureau. (2021, April 29). *What Methods Did People Use to Vote in the 2020 Election?* The United States Census Bureau. <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html>

³ <https://legis.wisconsin.gov/senate/23/bernier/media/2076/bernier-and-colleagues-release-election-bills.pdf>

Overviews of the Four WI Election Integrity Bills

The 4 bills filed under the Legislative Reference Bureau (LRB) cover the following:

- (1) LRB-5268 deals with pre-election issues and follows recommendations made from the Legislative Audit Bureau (LAB) for clerk training, maintenance of voter registration records, and electronic voting equipment.

Without further information we hope that it has **#2. Mandated and Public Voter List Hygiene.**⁴

- (2) LRB-5269 deals with Election Day issues and follows LAB recommendations for absentee ballots and electronic voting equipment. It clarifies the role of a Special Voting Deputy to ensure there can be no repeat of the confusion caused by the COVID-19 pandemic in nursing homes. It also follows the recommendation related to banning the use of private resources for election administration. It prohibits “ballot curing” but brings statewide fairness and transparency by stating directly in statute what specific information must be included on an absentee ballot certificate and requires that clerks notify the voter if their envelope must be corrected.

We will provide a detailed analysis of LRB-5269 bill below.

- (3) LRB-5270 handles post-election issues. Formal complaints must be resolved within 60 days unless extended by a vote of a majority of WEC commissioners. Post-election audit practice will be more robust and LAB will have a standing review of the audit already done by WEC.

We would like to see citizens involved in the investigations and oversights. We cover this in election integrity point **#4. Appointment of a Citizens Elections Supervisory Committee.**

- (4) LRB-4680 deals directly with the classification of an “indefinitely confined” voter, a process highlighted in both investigations and was abused in the 2020 General Election. The bill intends to return this practice to its original purpose by allowing those whose long-term physical condition would not allow them to vote in person. It modifies the definition of indefinitely confined to those who “cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year.” In order to avoid the common mistake of obtaining the status accidentally, it requires the use of a separate form to apply for indefinitely confined status. Finally, it requires the indefinitely confined to provide a current photo ID if one is available to them. If not, it requires them to submit the last four digits of their Social Security Number along with a witness’s signature attesting to their identity.

⁴ <https://lookaheadamerica.org/integrity/>

Summary of LRB-4680

Although Look Ahead America has analyzed this 4-page bill, the bill itself can be read here: <https://www.scribd.com/document/554773621/WI-Indefinitely-Confined-Voter-Amend-21-4680-P1>.

Quick Summary

The bill provides that one must really be indefinitely confined due to illness, frailty or a disability that will last over one year AND that one must apply for that status, providing identification. More importantly, it states that an epidemic of a disease or outbreak (i.e. COVID-19) does not qualify one as indefinitely confined. The fine will be \$1,000, six months in prison, or both for a false statement.

Section 1

Amends 6.86 [Methods for obtaining an absentee ballot] (2) (a).⁵

Defines “indefinitely confined” as due to illness, frailty or a disability that will last over one year, and cannot travel independently without significant burden. Only upon request by the elector, they may apply for an absentee ballot to be sent to their residence every year. The indefinitely confined status form and instructions will be given upon request to the elector and not in an absentee application. The envelope with the ballot for the elector will be marked that it cannot be forwarded. If one recovers from their condition then they must notify their clerk to change their status. Outbreaks of diseases and epidemics do not define one as indefinitely confined.

Section 2

Amends 6.86 (2) (b).⁶

The mailing list is to be kept current. If the elector fails to cast and return a ballot under this subsection, then the clerk will notify the elector by first class postcard or letter that their name will be removed from the mailing list unless they get a new application for indefinitely confined status (as per the new definition provided above) within 30 days of notification. If no response after 30 days of notification, or if the elector notifies the clerk that they are no longer indefinitely confined, then the clerk must remove the name from the indefinitely confined list, and attempt to notify the elector within 5 days that they have been removed from the list.

Section 3

Adds 6.86 (2) (c).

Each elector applying as indefinitely confined must provide valid and current identification. If applying online they may provide the number of their driver’s license, voter identification card, or the number of a current and valid identification card issued under s.343.50 [Identification cards],⁷ together with the elector's name and date of birth, and the commission can verify the

⁵ <https://docs.legis.wisconsin.gov/statutes/statutes/6/iv/86/2/a>

⁶ <https://docs.legis.wisconsin.gov/statutes/statutes/6/iv/86/2/b>

⁷ <https://docs.legis.wisconsin.gov/statutes/statutes/343/v/50>

elector's information using the voter verification system. Otherwise, if the elector lacks identification cards and numbers, then the elector must mail in with the application a statement affirming that they are indefinitely confined, provide the last 4 of their social security number, and authorize the commission to use the last 4 to authenticate their identity prior to granting indefinitely confined status.

Section 4

Adds 12.13 [Election Fraud] (3)⁸ (ig).

Falsely make any statement for the purpose of qualifying as indefinitely confined under sections 6.86 (2) (a) or (b).

Section 5

Amends 12.60 [Penalties] (1) (b).⁹

The fine will be up to \$1,000, six months in prison, or both for a false statement.

Conclusion for LRB-4680

We applaud this bill as it handles the indefinitely confined (IC) status abuse that we uncovered in our Wisconsin report of July 2021.¹⁰ In the report we determined that even when using conservative estimates over 24,000 illegally cast ballots were counted using the indefinitely confined status, but more likely over 157,000 ballots – 8 times the margin of victory – were cast. We recommend that you read our report, as the Wisconsin State Supreme Court ruled that Wisconsin elections were wrong to assert that voters could claim the status of “indefinitely confined” because of COVID-19. Wisconsin’s statutory law states that a person can only classify as indefinitely confined based on his/her age, his/her physical illness (NOT the illness of someone else), or his/her infirmity. The Court deemed that indefinitely confined ballots must be looked at on a case-by-case basis, which we did.¹¹

This bill addresses the situation presented during the COVID-19 pandemic, and closes a number of loopholes previously abused. The possibility of people claiming IC status for future years despite not having a valid claim may remain in the rolls, although at least now there are laws in place to close this loophole. Below we discuss another bill that mentions drop boxes, and we suggest that legislators add a provision in which any indefinitely confined ballot received in one of these drop boxes automatically results in rejection and removes the voter from the list, as well as incurs penalties, as these are only allowed to be returned by mail according to the law and clearly indicates someone who was not indefinitely confined. We also suggest adding election integrity point **#1. Thumbprint Authentication of Absentee Ballots** to verify that the voter is indeed the one casting the ballot to increase security. Nevertheless, we give it an A.

⁸ <https://docs.legis.wisconsin.gov/statutes/statutes/12/13/3>

⁹ <https://docs.legis.wisconsin.gov/statutes/statutes/12/60/1/b>

¹⁰ <https://lookaheadamerica.org/wisconsinreport/>

¹¹ <https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=315283>

Summary of LRB-5269

Although Look Ahead America has analyzed and detailed this 22-page bill, it can be found at: <https://www.scribd.com/document/554532431/Proposed-WI-Bill-for-More-Drop-Boxes-21-5269-P7>

Quick Summary

Personal care voting assistants at retirement homes and residential care facilities

Under this bill, during a public health emergency or infectious disease outbreak that requires restricted entry into residential care centers and qualified retirement homes, the clerk or board of elections may appoint any employee at those locations to serve as a personal care voting assistant (PCVA). A PCVA doesn't need to be an eligible voter of the county, but must be an eligible voter of Wisconsin. PCVAs also need to complete a 2-hour online training from WEC and take the oath of office as a special voting deputy. If a PCVA is appointed, then another PVCA affiliated with a different political party must be available if the initial PVCA represents a political party. No PCVAs may register anybody. PCVAs must also provide separate documentation as to who they helped and how, send this documentation along with the absentee ballot (on a separate document) and have the same information on the absentee ballot return envelope. The administrator of the residential or retirement facility must return the ballot envelopes in person, arrange for election officials to collect them, or mail them back.

The facilities may not block special voting deputies from coming into the home or facility unless the location is closed to the public due to an incident of infectious disease outbreak or a public health emergency as declared by the governor within 60 days preceding the election, or the Department of Health Services or the federal Centers for Medicare or Medicaid Services recommends that the family members of the occupants of a home or facility be denied access to the location. Even so, the facility must allow PCVAs to supervise absentee voting procedures.

Voting deputies must have arranged to visit the retirement homes of residential care facilities no later than 5 p.m. on the 11th day before the election, and the actual visits themselves may not occur earlier than the 4th Monday before the election or after 5 p.m. on the 6th working day before the election. The administrator must give notice when the deputies and PCVAs will be assisting voters at the home or facility to the relatives (for whom they have contact information). If the voter cannot cast a ballot during the 2 visits from the voting deputies due to the location being closed because of an incident of infectious disease outbreak or a public health emergency, then deputies must notify the clerk or board of election commissioners, who will in turn send the voter an absentee ballot as allowable by law.

Any home or facility employee who coerces the occupant(s) of a home or facility to register to vote or not register to vote, to apply or not apply for an absentee ballot, to cast or refrain from casting a ballot, or to vote for or against a candidate is guilty of a Class I felony.

Use of private resources and funds for election administration

No official or agent of a state agency, county, city, village, or town may apply for or receive any donations or grants of money, equipment, materials, or personnel from an individual or nongovernmental entity for the purposes of election administration, unless expressly authorized under statutes related to elections.

Similarly, no official or agent of a state agency, county, city, village, or town may enter into a contract related to election administration that includes either:

1. Any requirement governing election administration
2. The transfer of any duty or power related to election administration to a person not having that duty or power under Wisconsin law.

The penalty will be a Class I felony, a \$10,000 fine, up to 3 ½ years prison time, or both. A Class I felony applies also to any person who assists in counting or tabulating votes at an election unless that person is a resident of this state or is an election official who is trained to the extent provided by law and has signed the official oath and returned it to the municipal clerk with respect to that election. Any individual other than an election official or a vendor of an electronic voting system who performs any task in election administration will also receive a Class I felony and the above fines and sentences.

Election Fraud

Any of these violations equal a Class I felony by election officials: allowing anyone to vote or registering to vote, especially when they know that person is not qualified to do so; Assisting or causing the casting of a vote or receipt of a registration they know is invalid; Assisting or causing the rejection of a vote or receipt of a registration they know is valid; Intentionally failing to promptly report election fraud by another election official.

Absentee Ballot Certificates

If a clerk receives an absentee ballot with an improperly completed certificate, or no certificate, not only must the clerk return the ballot to the elector, but they must post a notification of the defect on the voter's information page on MyVote Wisconsin. They may also attempt to notify the voter by other means. Any absentee ballot without all of the following may not be counted:

1. The voter's printed first name.
2. The voter's printed last name.
3. The voter's house or apartment number.
4. The voter's street name.
5. The voter's municipality.
6. The voter's signature.
7. The witness's printed first name.
8. The witness's printed last name.
9. The witness's house or apartment number.
10. The witness's street name.
11. The witness's municipality.
12. The witness's signature.

Likewise, a ballot without a certificate may not be counted. Nobody outside of the voter or the witness (in respect to their own information) may correct the defect, lest they face up to a \$500 fine and imprisonment of up to 30 days, or both.

Absentee Ballot Certificates

A voter may return their own absentee ballot by mailing it or delivering it in person to the clerk, or on the day of the election they may return it to their polling place to a drop box authorized by the clerk on the premises where their office is permanently located that is drive-up accessible. The clerk may authorize up to 3 additional drop boxes (that is, 4 total) on municipal property if their municipality has a population of 70,000 or more, and these do not need to be drive-up accessible, but they must be under continuous video surveillance, with the recordings to be kept by the municipality 22 months after the election. All other drop boxes are banned.

The drop boxes must be secured by a lock and tamper-proof seal with a serial number on the access door and be moisture resistant, with only a slot large enough for an absentee ballot. It must adhere to the accessibility requirements under the federal Americans with Disabilities Act, and emptied daily at 9 a.m., and at 9 a.m. and 5 p.m. the day before election day by the clerk, deputy clerk, or chief inspector in public view. Upon emptying a drop box at 5 p.m. on the day before election day, the clerk, deputy clerk, or chief inspector must seal the drop box and post a notice on the drop box informing voters that the time for depositing absentee ballots in the drop box has expired and all absentee ballots must go to the office of the municipal clerk or to the voter's polling place by 8 p.m. on election day to get their absentee ballots counted.

The clerk must publish notice of the location of the drop box and days available for receiving absentee ballots. The clerk must also provide notice of the times when each drop box will be emptied and the deadline for returning an absentee ballot in order to be counted, must publish the location of each drop box on the MyVote Wisconsin website and, if they run their own site, the location and the times when each box will be emptied on their own website.

Appointment of Poll Workers

No poll workers may be employees of the following:

1. A candidate committee, legislative campaign committee, political action committee, independent expenditure committee, political party, recall committee, or referendum committee.
2. A political organization required to register the Federal Elections Commission.
3. An issue advocacy group.

Municipal Board of Canvassers

Allows a municipal board of canvassers to recess as the result of a natural disaster, if a board member is ill or otherwise incapacitated, or if the physical condition of the canvass location is unsuitable for continuing the canvass. However, the bill requires that the board reconvene as soon as possible. In addition, if the board recesses because a member is ill or otherwise incapacitated, then the municipal clerk must immediately appoint an individual to fill the vacancy on the board to temporarily replace that member.

Conclusion for LRB-4680

This bill is a mixed bag. Racine Sheriff Christopher Schmaling widely publicized the retirement home and residential facilities issues in an October 2021 press conference, and the bill spends most of its response to those allegations and findings. For the most part, these items seem reasonable, however, the disclosure of one's political party by the employees turned PCVAs seems like it could result in repercussions for the employer or employees. The other question is if there is a disease outbreak at the home, would handling the absentee ballots by the special voting deputies, letter carriers, clerks, etc. not come with increased risk? It seems that there should be some sort of ability to mark these ballots as such if they came from such a location.

The bill somewhat handles **#6. Equitable Distribution of Private Contributions to Election Operations** - in this case it is equitable because no private funds allowable means equal distribution to all - although it bars only state and local election workers, etc. and not the actual counties themselves from getting private funds. The problem that we saw in 2020 was that entities such as The Center for Tech and Civic Life (CTCL) funded thousands of counties across the country with massive grants; the issue was not one of individuals getting monies.

The bill also does nothing to incorporate either **#1. Thumbprint Authentication of Absentee Ballots** nor **#3. Ban on the Use of "Black Box" Voting Equipment** for absentee voting or in person voting, and so these areas remain compromised in terms of security vulnerabilities.

The publishing of rejected absentee ballot certificates on the MyVote Wisconsin and the reasons why does not result in the cleaning of the voter rolls, but it appears to make a small bit of progress towards filling **#2. Mandated and Public Voter List Hygiene** insofar as making rejected absentee ballots cast by those in the voter rolls process more public and mandated.

The bill also allows for drop boxes, which is not a positive, but at least it removes them from public areas like parks, etc. and places them on municipal elections clerk properties. Ideally there would be total elimination of ballot drop boxes, but at least this is an improvement over the situation in the 2020 General Election. We suggest that legislators add a provision in which any indefinitely confined ballot received in one of these drop boxes automatically results in rejection and removes the voter from the list, as well as incurs penalties, as these are only allowed to be returned by mail according to the law and clearly indicates that the ballot was returned by someone not indefinitely confined.

The poll worker section should mention questions in poll workers' job applications that allow them to disclose potential conflicts of interest *before* they begin employment. Applicants should also swear an oath to answering the following questions honestly:

“Are you an employee of or volunteer with any of the following:

1. A candidate committee, legislative campaign committee, political action committee, independent expenditure committee, political party, recall committee, or referendum committee?
2. A political organization required to register the Federal Elections Commission?
3. An issue advocacy group?

If you answered yes to any of the above, then you may not be a poll worker in this election.”

As for municipal workers, this does not change much in terms of security holes and so that’s a neutral, reasonable change.

Overall the bill is helpful and works to handle the vulnerabilities uncovered in the 2020 General Election, but it should incorporate our above suggestions to close the loopholes before bad actors can exploit them in future elections.

How to Help

Only when more people get involved, will meaningful, impactful change occur. That’s how Look Ahead America will positively impact election reform.

Support Look Ahead America by signing up to volunteer at <https://www.lookaheadamerica.org/volunteer>.

If you can volunteer 10-15 hours a week in your state, then we could use your help as well at <https://lookaheadamerica.org/lead>.

Or you may make a tax-deductible contribution at <https://www.lookaheadamerica.org/donate>.

You can also join our Discord community server at <https://discord.gg/lookaheadamerica>.