



ENGROSSED 2017 ASSEMBLY BILL 637

March 13, 2018 - Printed by direction of SENATE CHIEF CLERK.

1 **AN ACT to repeal** 6.15 (6) and 6.21; **to renumber and amend** 5.84 (1); **to amend**
2 5.85 (2) (a), 6.84 (2), 6.88 (3) (b), 6.92 (1), 6.925, 6.94, 6.95 and 7.52 (3) (b); and
3 **to create** 5.84 (1) (b), 6.91 and subchapter VI of chapter 6 [precedes 6.981] of
4 the statutes; **relating to:** using an electronic voting machine to cast a vote with
5 an in-person absentee ballot and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

Engrossment information:

The text of Engrossed 2017 Assembly Bill 637 consists of the following documents adopted in the assembly on February 20, 2018: Assembly Substitute Amendment 3 as affected by Assembly Amendments 2, 9, 11, and 12. The text also includes the March 13, 2018, chief clerk's correction to Assembly Amendment 12 to Assembly Substitute Amendment 3 to Assembly Bill 637.

Content of Engrossed 2017 Assembly Bill 637:

This bill authorizes a municipality to allow its electors to vote before election day by using an electronic voting machine to cast an in-person absentee ballot (the efficiency option). If a municipality enacts an ordinance or adopts a resolution to implement this option, and the Elections Commission certifies that the municipality is capable of implementation, an elector may vote before election day at the municipal clerk's office by completing his or her ballot and casting the ballot using an electronic voting system. Using the efficiency option may occur simultaneously

ENGROSSED ASSEMBLY BILL 637

or in conjunction with making an application in person using absentee ballot envelopes, but the periods for voting using the efficiency option and for making an application in person by using absentee ballot envelopes need not be the same. The votes are not tabulated before election day, but the municipal clerk publishes the daily tally of the total number of ballots cast before election day on the municipality's Internet site. The bill requires the municipality to publish a notice specifying the locations, dates, and hours for voting using the efficiency option and the location where results will be tallied on election night. Under the bill, a person who acts in any manner that would give him or her the ability to know or to provide information on the accumulating or final results from the ballots cast using the efficiency option is guilty of a Class I felony. The current law that applies to voting on election day with regard to election observers, assisting electors, the availability of accessible systems, and the privilege of absentee voting also applies to voting as provided under the bill.

Under current law, an election inspector may challenge for cause any person offering to vote whom the inspector knows or suspects is not a qualified elector. Another elector may also make such a challenge for cause. When a voter's qualifications are challenged, the inspector must administer an oath to the challenged elector to affirm that he or she will fully and truly answer the inspector's questions regarding the person's residence and qualifications. The bill allows the chief clerk, the deputy clerk, or an inspector to challenge for cause any person offering to vote and to administer the oath and ask the relevant questions regarding the person's residence and qualifications.

The bill also repeals the current law provision regarding the treatment of absentee ballots cast by a person who dies before election day.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 5.84 (1) of the statutes is renumbered 5.84 (1) (a) and amended to
2 read:

3 5.84 (1) (a) ~~Where~~ Except as provided in par. (b), where any municipality
4 employs an electronic voting system which utilizes automatic tabulating equipment,
5 either at the polling place or at a central counting location, the municipal clerk shall,
6 on any day not more than 10 days prior to the election day on which the equipment
7 is to be utilized, have the equipment tested to ascertain that it will correctly count
8 the votes cast for all offices and on all measures. Public notice of the time and place
9 of the test shall be given by the clerk at least 48 hours prior to the test by publication

ENGROSSED ASSEMBLY BILL 637**SECTION 1**

1 of a class 1 notice under ch. 985 in one or more newspapers published within the
2 municipality if a newspaper is published therein, otherwise in a newspaper of
3 general circulation therein. The test shall be open to the public. The test shall be
4 conducted by processing a preaudited group of ballots so marked as to record a
5 predetermined number of valid votes for each candidate and on each referendum.
6 The test shall include for each office one or more ballots which have votes in excess
7 of the number allowed by law and, for a partisan primary election, one or more ballots
8 which have votes cast for candidates of more than one recognized political party, in
9 order to test the ability of the automatic tabulating equipment to reject such votes.
10 If any error is detected, the municipal clerk shall ascertain the cause and correct the
11 error. The clerk shall make an errorless count before the automatic tabulating
12 equipment is approved by the clerk for use in the election.

13 **SECTION 2.** 5.84 (1) (b) of the statutes is created to read:

14 5.84 (1) (b) For a municipality that authorizes the absentee voting efficiency
15 option under subch. VI of ch. 6, the municipal clerk shall have the automatic
16 tabulating equipment tested, as provided under par. (a), on any day not more than
17 10 days prior to the first day on which such voting is available in the municipality
18 pursuant to s. 6.981.

19 **SECTION 3.** 5.85 (2) (a) of the statutes is amended to read:

20 5.85 (2) (a) The Except when using a report function capable of reporting
21 write-in votes by scanning the ballots and electronically capturing the write-in
22 votes, the election officials shall examine the ballots or record of votes cast for
23 write-in votes and shall count and tabulate the write-in votes. The election officials
24 shall count write-in votes as provided in s. 7.50 (2) (d). When an electronic voting
25 system is used in which ballots are distributed to electors, before separating the

ENGROSSED ASSEMBLY BILL 637**SECTION 3**

1 remaining ballots from their respective covering envelopes, the election officials
2 shall examine the ballots for write-in votes. When an elector has cast a write-in
3 vote, the election officials shall compare the write-in vote with the votes on the ballot
4 to determine whether the write-in vote results in an overvote for any office. In case
5 of an overvote for any office, the election officials shall follow the procedure in par.
6 (b).

7 **SECTION 3m.** 6.15 (6) of the statutes is repealed.

8 **SECTION 4.** 6.21 of the statutes is repealed.

9 **SECTION 4m.** 6.84 (2) of the statutes is amended to read:

10 6.84 (2) INTERPRETATION. Notwithstanding s. 5.01 (1), with respect to matters
11 relating to the absentee ballot process, ss. 6.86, 6.87 (3) to (7) and 9.01 (1) (b) 2. and
12 4. and subch. VI shall be construed as mandatory. Ballots cast in contravention of
13 the procedures specified in those provisions may not be counted. Ballots counted in
14 contravention of the procedures specified in those provisions may not be included in
15 the certified result of any election.

16 **SECTION 4r.** 6.88 (3) (b) of the statutes is amended to read:

17 6.88 (3) (b) When the inspectors find that a certification is insufficient, that the
18 applicant is not a qualified elector in the ward or election district, that the ballot
19 envelope is open or has been opened and resealed, that the ballot envelope contains
20 more than one ballot of any one kind or, except in municipalities where absentee
21 ballots are canvassed under s. 7.52, that the certificate of a military or overseas
22 elector who received an absentee ballot by facsimile transmission or electronic mail
23 is missing, ~~or if proof is submitted to the inspectors that an elector voting an absentee~~
24 ~~ballot has since died~~, the inspectors shall not count the ballot. The inspectors shall
25 endorse every ballot not counted on the back, "rejected (giving the reason)". The

ENGROSSED ASSEMBLY BILL 637**SECTION 4r**

1 inspectors shall reinsert each rejected ballot into the certificate envelope in which
2 it was delivered and enclose the certificate envelopes and ballots, and securely seal
3 the ballots and envelopes in an envelope marked for rejected absentee ballots. The
4 inspectors shall endorse the envelope, "rejected ballots" with a statement of the ward
5 or election district and date of the election, signed by the chief inspector and one of
6 the inspectors representing each of the 2 major political parties and returned to the
7 municipal clerk in the same manner as official ballots voted at the election.

8 **SECTION 5.** 6.91 of the statutes is created to read:

9 **6.91 Place for challenging an elector.** The vote of any voter, including an
10 absent voter, may be challenged as provided under this subchapter at the polling
11 place, at the municipal clerk's office during the period for making an in-person
12 application for an absentee ballot under s. 6.86 (1) (b), at the municipal clerk's office
13 during the period for using the voting procedure under s. 6.981, or at a central count
14 location.

15 **SECTION 6.** 6.92 (1) of the statutes is amended to read:

16 6.92 (1) Except as provided in sub. (2), ~~each~~ the clerk or deputy clerk or an
17 inspector shall challenge for cause any person offering to vote whom the clerk, deputy
18 clerk, or inspector knows or suspects is not a qualified elector or who does not adhere
19 to any voting requirement under this chapter. If a person is challenged as
20 unqualified by the clerk or deputy clerk or an inspector, ~~one of the inspectors~~ the clerk
21 or deputy clerk or an inspector shall administer the following oath or affirmation to
22 the person: "You do solemnly swear (or affirm) that you will fully and truly answer
23 all questions put to you regarding your place of residence and qualifications as an
24 elector of this election"; and shall then ask questions which are appropriate as
25 determined by the commission, by rule, to test the person's qualifications.

ENGROSSED ASSEMBLY BILL 637**SECTION 7**

1 **SECTION 7.** 6.925 of the statutes is amended to read:

2 **6.925 Elector making challenge in person.** Any elector may challenge for
3 cause any person offering to vote whom the elector knows or suspects is not a
4 qualified elector. If a person is challenged as unqualified by an elector, ~~one of the~~
5 ~~inspectors~~ the clerk or deputy clerk or an inspector may administer the oath or
6 affirmation to the challenged elector under s. 6.92 and ask the challenged elector the
7 questions under that section which are appropriate to test the elector's
8 qualifications. In addition, ~~one of the inspectors~~ the clerk or deputy clerk or an
9 inspector shall administer the following oath or affirmation to the challenging
10 elector: "You do solemnly swear (or affirm) that you will fully and truly answer all
11 questions put to you regarding the challenged person's place of residence and
12 qualifications as an elector of this election"; and shall then ask questions which are
13 appropriate as determined by the commission, by rule, to test the qualifications of
14 the challenged elector.

15 **SECTION 8.** 6.94 of the statutes is amended to read:

16 **6.94 Challenged elector oath.** If the person challenged refuses to answer
17 fully any relevant questions put to him or her by the clerk, deputy clerk, or inspector
18 under s. 6.92, the clerk, deputy clerk, or inspectors shall reject the elector's vote. If
19 the challenge is not withdrawn after the person offering to vote has answered the
20 questions, ~~one of the inspectors~~ the clerk or deputy clerk or an inspector shall
21 administer to the person the following oath or affirmation: "You do solemnly swear
22 (or affirm) that: you are 18 years of age; you are a citizen of the United States; you
23 are now and for 28 consecutive days have been a resident of this ward except under
24 s. 6.02 (2); you have not voted at this election; you have not made any bet or wager
25 or become directly or indirectly interested in any bet or wager depending upon the

ENGROSSED ASSEMBLY BILL 637**SECTION 8**

1 result of this election; you are not on any other ground disqualified to vote at this
2 election”. If the person challenged refuses to take the oath or affirmation, the
3 person’s vote shall be rejected. If the person challenged answers fully all relevant
4 questions put to the elector by the clerk, deputy clerk, or inspector under s. 6.92,
5 takes the oath or affirmation, and fulfills the applicable registration requirements,
6 and if the answers to the questions given by the person indicate that the person meets
7 the voting qualification requirements, the person’s vote shall be received.

8 **SECTION 9.** 6.95 of the statutes is amended to read:

9 **6.95 Voting procedure for challenged electors.** Whenever the clerk,
10 deputy clerk, or inspectors under ss. 6.92 to 6.94 receive the vote of a person offering
11 to vote who has been challenged, the clerk, deputy clerk, or inspectors shall, before
12 giving the elector a ballot, write on the back of the ballot the serial number of the
13 challenged person corresponding to the number kept at the election on the poll list,
14 or other list maintained under s. 6.79, and the notation “s. 6.95”. If voting machines
15 are used in the municipality where the person is voting, the person’s vote may be
16 received only upon an absentee ballot furnished by the municipal clerk which shall
17 have the corresponding serial number from the poll list or other list maintained
18 under s. 6.79 and the notation “s. 6.95” written on the back of the ballot by the
19 inspectors before the ballot is given to the elector. The clerk, deputy clerk, or
20 inspectors shall indicate on the list the reason for the challenge. The clerk, deputy
21 clerk, or inspectors shall then deposit the ballot. The challenged ballots shall be
22 counted under s. 5.85 or 7.51. The municipal board of canvassers may decide any
23 challenge when making its canvass under s. 7.53. If the returns are reported under
24 s. 7.60, a challenge may be reviewed by the county board of canvassers. If the returns
25 are reported under s. 7.70, a challenge may be reviewed by the chairperson of the

ENGROSSED ASSEMBLY BILL 637**SECTION 9**

1 commission or the chairperson's designee. The decision of any board of canvassers
2 or of the chairperson or chairperson's designee may be appealed under s. 9.01. The
3 standard for disqualification specified in s. 6.325 shall be used to determine the
4 validity of challenged ballots.

5 **SECTION 10.** Subchapter VI of chapter 6 [precedes 6.981] of the statutes is
6 created to read:

CHAPTER 6**SUBCHAPTER VI****ABSENTEE VOTING****EFFICIENCY OPTION**

11 **6.981 Efficiency option.** (1) (a) The municipal clerk shall complete the
12 application as provided under s. 6.87 (1) and allow an elector to cast a ballot prior to
13 election day by casting a ballot into an electronic voting system as provided under
14 s. 6.80 at the municipal clerk's office, if the governing body of the municipality has
15 enacted an ordinance or adopted a resolution to allow such voting and the
16 commission has certified the municipality under s. 6.982 (8) (a) to conduct such
17 voting. An elector may vote under this subchapter during the time prescribed for an
18 application made in person pursuant to s. 6.86 (1) (b), but only after the municipality
19 has completed a successful public test of the programmed media necessary to vote
20 under this subchapter and the test occurs no more than 10 days prior to the use of
21 the media for voting under this subchapter. A municipality shall specify the
22 locations, dates, and hours for voting and the location where results will be tallied
23 on election night in the notice under s. 10.01 (2) (e). The municipal clerk, or his or
24 her designee, shall send the notice to the 2 major political parties, as defined in s.

ENGROSSED ASSEMBLY BILL 637**SECTION 10**

1 13.46 (5), at the state level and, if applicable, at the county and local levels, on the
2 same date as the notice is posted for the general public.

3 (b) After the governing body of the municipality has enacted an ordinance or
4 adopted a resolution to allow the voting procedure under par. (a), the municipality
5 shall use that procedure for all subsequent elections until such time that the
6 governing body enacts an ordinance or adopts a resolution repealing the use of the
7 procedure. The municipal clerk or deputy municipal clerk shall supervise the voting
8 procedure under par. (a).

9 (c) This subchapter does not preclude the clerk from using absentee envelopes
10 when the clerk or the elector determines that such use is necessary. Voting as
11 provided under this subchapter may occur simultaneously or in conjunction with
12 making an application in person using absentee envelopes, but the periods for voting
13 as provided under this subchapter and for making an application in person using
14 absentee envelopes need not be the same.

15 **6.982 Administration. (1)** (a) Votes cast under s. 6.981 may not be tabulated
16 until the closing of the polls on election day, but the municipal clerk shall publish on
17 the municipality's Internet site a daily tally of the total number of ballots cast under
18 s. 6.981 in the municipality.

19 (b) No person may act in any manner that would give him or her the ability to
20 know or to provide information on the accumulating or final results from the ballots
21 cast under s. 6.981 before the close of the polls on election day. A person who violates
22 this paragraph is guilty of a Class I felony.

23 (c) An elector who casts a ballot under s. 6.981 that is accepted by automatic
24 tabulating equipment may not request that the ballot be returned to him or her as
25 defective in order to cast a new ballot, as provided under s. 6.80 (2) (c).

ENGROSSED ASSEMBLY BILL 637**SECTION 10**

1 (d) The clerk or deputy clerk shall reconcile the ballots cast each day to ensure
2 that the number of ballots cast equals the number issued. The reconciliation may
3 include performing checks that do not involve examining the ballots cast, including
4 checking data entry and verifying mathematical computations. If the clerk or deputy
5 clerk is unable to reconcile the ballots, the incident log shall include the date and any
6 other information necessary to clearly identify the reconciliation issue. The
7 municipality shall post the daily reconciliation incident report on the municipality's
8 Internet site at the close of each day during the period for voting under this
9 subchapter. If the clerk or deputy clerk is unable to reconcile the ballots, the clerk
10 or deputy clerk shall deliver all ballot bags of unreconciled ballots, along with the
11 daily reconciliation incident reports, to the appropriate board of canvassers as
12 provided under s. 7.53 and the board of canvassers shall complete the reconciliation
13 using the methods provided under s. 7.51.

14 (2) At all times when the process for voting under this subchapter is in use the
15 municipality shall have at least 2 individuals present, not including an elector. The
16 tabulation equipment shall be in a location that is visible to the clerk or the clerk's
17 designee and to at least one other person. Automatic tabulating equipment used for
18 purposes of this subchapter shall be secured with a tamper-evident security seal and
19 the clerk or the clerk's designee, in the presence of at least one witness, shall check
20 the seals for tampering at the beginning and ending of each day designated for voting
21 under s. 6.981. The areas where the programmed media and the ballots cast are
22 housed shall be secured with tamper-evident security seals. At least 2 persons shall
23 be present for any administrative process that requires access to a sealed area and
24 the breaking of a tamper-evident security seal, including clearing a jammed ballot
25 or emptying a full ballot bin. The clerk or clerk's designee shall daily document all

ENGROSSED ASSEMBLY BILL 637**SECTION 10**

1 checks and record any such activity and reason in which a seal is broken and replaced
2 under this subsection. The clerk or clerk's designee shall obtain the signature of any
3 witness who was present when any such activity is performed. When not in use the
4 tabulation equipment and the cast ballots sealed inside tamper-evident security
5 seal ballot bags shall be secured in a double-lock location such as a locked cabinet
6 inside a locked office.

7 (3) For purposes of s. 6.981, the municipal clerk shall issue ballots using the
8 voter registration and voter information systems established and maintained by the
9 elections commission in the same manner that the systems are used to issue and
10 track absentee ballots. The commission shall program the system so that ballots
11 issued for purposes of this subchapter are tracked by creating a separate
12 classification type in the statewide voter registration system to identify electors
13 casting a ballot using the process under this subchapter. The commission shall work
14 to upgrade the system to allow for the system to sequentially number absentee
15 ballots, but municipalities may use the system to identify electors casting a ballot
16 using the process under this subchapter regardless of whether such upgrade has
17 been completed.

18 (4) (a) An elector requesting to cast a ballot under s. 6.981 shall state aloud his
19 or her name and address. Except as provided in par. (b), the elector shall sign an
20 absentee ballot certification request log for purposes of this subchapter. The
21 municipal clerk shall have the elector provide an electronic or a handwritten
22 signature, but if the clerk allows the use of electronic signatures, the clerk shall not
23 generate a final absentee ballot log until after the last day designated for voting
24 under s. 6.981.

ENGROSSED ASSEMBLY BILL 637**SECTION 10**

1 (b) The municipal clerk may have an elector sign an electronic poll book using
2 an electronic signature as an alternative to signing an absentee ballot certification
3 request log under par. (a).

4 (5) (a) Except as provided in par. (b), the municipal clerk shall seal together all
5 ballots cast in the municipality under s. 6.981 each day in a numbered and
6 tamper-evident security seal ballot bag and document all such action and numbers.
7 All such ballot bags shall remain in the clerk's possession, sealed and secured by the
8 municipal clerk, until such time that they are needed at a central count location or
9 for audit, review at the polling place, recount, or storage.

10 (b) If the municipal clerk is required to report vote totals by ward, but the votes
11 in multiple wards are processed through a single memory device and tabulator, the
12 clerk shall not sort the ballots into wards before placing them into the bag described
13 under par. (a).

14 (6) Section 7.41, regarding the public's right to access the polling place; s. 6.82,
15 regarding assisting electors; s. 5.25 (4) (a), regarding the availability of accessible
16 systems; and s. 6.84 (1), regarding the privilege of absentee voting, apply to voting
17 conducted under s. 6.981. The municipal clerk shall post at a conspicuous space near
18 the tabulation equipment a notice, in 18 point type, warning the elector voting as
19 provided under this subchapter that a ballot cast and accepted by the tabulation
20 equipment may not be retrieved in order to spoil the ballot under s. 6.86 (5).

21 (8) (a) The commission shall establish procedures for certifying municipalities
22 to conduct voting under s. 6.981. The governing body of a municipality wishing to
23 obtain certification under this paragraph shall send a plan for administering the
24 process under this subchapter to the commission for review no later than 60 days
25 prior to the first day on which the municipality would conduct voting under s. 6.981.

ENGROSSED ASSEMBLY BILL 637**SECTION 10**

1 The commission shall review the plan and give notice of approval or of changes
2 needed to receive approval no later than 20 days after receiving the plan. The
3 commission may send notice to the municipality by electronic mail. The commission
4 shall certify a municipality to conduct voting under s. 6.981 if it determines that the
5 municipality satisfies all of the following:

6 1. Its governing body has approved the use of voting under this subchapter, as
7 provided under s. 6.981 (1) (a).

8 2. It is using equipment capable of capturing a digital image of both the front
9 and back of the ballot.

10 4. It has Internet access at each location where voting will be conducted under
11 this subchapter so that an absentee ballot may be issued to an elector using the
12 statewide voter registration system immediately prior to the elector casting his or
13 her ballot and so that the clerk or clerk's designee may add new or changed
14 registration information prior to issuing an absentee ballot.

15 5. It is able to update its Internet site at the end of each day.

16 6. It is capable of adequately securing all equipment and ballots in a
17 double-lock location.

18 7. Its plan for administering the process under this subchapter satisfies all
19 other requirements set forth in this subchapter.

20 (b) The commission shall establish procedures for the administration of this
21 subchapter, including procedures to facilitate the secure transfer of memory devices
22 from their use for voting under s. 6.981 to their use in tabulating the votes on election
23 day.

24 **SECTION 10m.** 7.52 (3) (b) of the statutes is amended to read:

ENGROSSED ASSEMBLY BILL 637**SECTION 10m**

1 7.52 (3) (b) When the board of absentee ballot canvassers finds that a
2 certification is insufficient, that the applicant is not a qualified elector in the ward
3 or election district, that the ballot envelope is open or has been opened and resealed,
4 that the ballot envelope contains more than one ballot of any one kind, or that the
5 certificate of a military or overseas elector who received an absentee ballot by
6 facsimile transmission or electronic mail is missing, ~~or if proof is submitted to the~~
7 ~~board of absentee ballot canvassers that an elector voting an absentee ballot has~~
8 ~~since died~~, the board of absentee ballot canvassers shall not count the ballot. Each
9 member of the board of absentee ballot canvassers shall endorse every ballot not
10 counted on the back as “rejected (giving the reason).” The board of absentee ballot
11 canvassers shall reinsert each rejected ballot into the certificate envelope in which
12 it was delivered and enclose the certificate envelopes and ballots, and securely seal
13 the ballots and envelopes in an envelope marked for rejected absentee ballots. The
14 board of absentee ballot canvassers shall endorse the envelope as “rejected ballots,”
15 with a statement of the ward or election district and date of the election, and each
16 member of the board of absentee ballot canvassers shall sign the statement. The
17 board of absentee ballot canvassers shall then return the envelope containing the
18 ballots to the municipal clerk.

19

(END)