

2005 DRAFTING REQUEST

Bill

Received: **02/09/2005**

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Pocan (608) 266-8570**

By/Representing: **Glenn Wavrunek**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Elections - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Pocan@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Use of electronic voting machines; open source coding

Instructions:

Per 2003 AB-680.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 03/10/2005	kfollett 03/11/2005		_____			Local
/1			chaugen 03/11/2005	_____	Inorthro 03/11/2005		S&L
/2	jkuesel 07/08/2005	kfollett 07/11/2005	pgreensl 07/12/2005	_____	sbasford 07/12/2005		Local
/3	jkuesel	kfollett	rschluet	_____	lemery	Inorthro	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	07/27/2005	07/27/2005	07/28/2005	_____	07/28/2005		08/01/2005

FE Sent For:

<END>

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jkuesel 7/27/05
13 kfollett 7/27/05
pgreensl 7/27/05
sbasford 7/27/05
4275

FE Sent For:

<END>

DN878

2005 DRAFTING REQUEST

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By/Representing: Glenn Wavrunek

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May Contact:

Addl. Drafters:

Subject: Elections - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Pocan@legis.state.wi.us

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/?	jkuesel 03/10/2005	kfollett 03/11/2005					Local
/1 12	jkuesel 7/8/05	12/gf 7/11	chaugen 03/11/2005	7/12 P8A	Inorthro 03/11/2005		
FE Sent For:			7/11 P8	P8/Rs <END>			

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1? / 1	jkuesel 3/10	1/11/05 3/11/05	ch 3/11	ch 3/11			

FE Sent For:

<END>

Kuesel, Jeffery

To: Wavrunek, Glenn
Subject: RE: Pocan Bill Request

Glenn,

I will enter these requests for you.

Jeff Kuesel

-----Original Message-----

From: Wavrunek, Glenn
Sent: Tuesday, February 08, 2005 4:17 PM
To: Kuesel, Jeffery
Subject: Pocan Bill Request

Jeffery -

Mark would like two re-drafts from last session:

1.) Use of preferential voting to determine the results of elections for local offices - we would like an exact redraft of 2003 LRB-2564/1.

2.) Discontinuance of the use of electronic voting machines - we would like a exact redraft of 2003 LRB-3522/1 (AB680) with one change ... an additional part where members of the public are allowed to view the source code of the electronic machines. Basically, in order to have full faith that the machines are counting the votes correctly, Mark would like the bill to allow outside computer experts to examine the software codes in order to ensure that the machines work accurately.

Any questions, please feel free to call me at 266-8570. Thanks,

Glenn Wavrunek
Office of Rep. Mark Pocan

2005

Date (time) needed

Mon 3/14

LRB - 2044, 1

JTK: kjf:

BILL

Use the appropriate components and routines developed for bills.

Gen

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; **relating to:** *electronic voting system standards*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

- For the main heading, execute: **create → anal: → title: → head**
- For the subheading, execute: **create → anal: → title: → sub**
- For the sub-subheading, execute: **create → anal: → title: → sub-sub**

For the analysis text, in the component bar:

- For the text paragraph, execute: **create → anal: → text**

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

SECTION #.

2003 ASSEMBLY BILL 680

November 20, 2003 - Introduced by Representatives POCAN, ALBERS, BLACK, GRONEMUS, J. LEHMAN, MUSSER, PLOUFF and TAYLOR, cosponsored by Senators PLALE and A. LASEE. Referred to Committee on Campaigns and Elections.

1 AN ACT *to repeal* 5.77 (2) and 7.23 (1) (g); *to renumber and amend* 5.77 (1);
2 *to amend* 5.02 (1e), 5.02 (4m), 5.02 (24r), 5.40 (5), 5.51 (6), 5.53 (1), 5.62 (1) (a),
3 5.66 (2), 5.76, 5.78, 5.81 (1) and (3), 5.85 (2) and (5), 5.91 (6), 5.91 (7), 5.91 (9),
4 5.94, 6.82 (2) (a) and (b), 6.82 (3), 7.15 (3) (a), 7.23 (1) (f), 7.37 (4), 7.51 (6), 9.01
5 (1) (b) 6., 8. and 10., 10.01 (2) (b), 10.02 (3) (b) 1., 2., 2m., 3. and 4., 10.02 (3) (c)
6 and (d), 10.06 (3) (e) and 12.13 (3) (j); and *to create* 5.91 (15) of the statutes;
7 **relating to:** discontinuance of the use of electronic voting machines at elections
8 in this state.

Analysis by the Legislative Reference Bureau

Currently, with limited exceptions, every municipality with a population of 7,500 or more must use voting machines or an electronic voting system at all primaries and other elections held in the municipality. Either mechanical or electronic voting machines may be used. No electronic voting system, including an electronic voting machine, may be used unless the system meets statutory standards and is approved by the State Elections Board for use at elections held in this state.

Publicly
All voting machines must be tested before each election to determine if they are functioning properly. If voting machines are used, ballots need not be printed and distributed to electors, but if electronic voting machines are used, the machines must

electronic

systems

The system must enable an elector to privately verify the votes selected by the elector before casting his or her ballot.

ASSEMBLY BILL 680

maintain a cumulative tally of votes cast that is retrievable in the event of a power outage, evacuation, or malfunction so that the record of the votes cast prior to the time that the problem occurs is preserved, *and the machines must produce a permanent*

paper of record of the vote cast by each elector at the time that it is cast that enables a manual count or recount of the elector's vote.
~~This bill discontinues the authorization for municipalities to use electronic voting machines at elections held in this state. Under the bill, if an electronic voting system is used, the system must be of a type in which printed ballots are distributed to electors.~~

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 5.02 (1e) of the statutes is amended to read:

5.02 (1e) "Ballot" means a ballot label, sheet of paper or envelope on which votes are recorded. The term also includes a sheet or card, filmstrip or other device listing or containing information relative to offices, candidates and referenda which is placed, ~~projected or composed~~ on the board ~~or screen~~ inside a voting machine.

SECTION 2. 5.02 (4m) of the statutes is amended to read:

5.02 (4m) "Electronic voting system" means a system in which votes are recorded on ballots, and the votes are subsequently counted and tabulated by automatic tabulating equipment. ~~The term also includes a voting machine on which votes are recorded and tabulated by electronic means.~~

SECTION 3. 5.02 (24r) of the statutes is amended to read:

5.02 (24r) "Voting machine" means a machine which serves in lieu of a voting booth and which mechanically ~~or electronically~~ records the votes cast by electors, who depress levers ~~or buttons~~ located next to the choices listed on a ballot to cast their votes.

SECTION 4. 5.40 (5) of the statutes is amended to read:

JWS
ZA

paper of record of the vote cast by each elector at the time that it is cast that enables a manual count or recount of the elector's vote.

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2044/lins
JTK.....

✓
SECTION 1. 5.84 (title) of the statutes is amended to read:

X 5.84 (title) **Testing of equipment; custody of requirements for programs and ballots.**

History: 1979 c. 311; 2001 a. 16.

✓
SECTION 2. 5.84 (3) of the statutes is created to read:

5.84 (3) If a municipality uses an electronic voting system for voting at any election, the municipal clerk shall provide to any person, upon request, at the expense of the municipality, the coding for the software that the municipality uses to operate the system and to tally the votes cast.

→ (circled) PWS IA
SECTION 3. 5.91 (19) of the statutes is created to read:

5.91 (19) The coding for the software that is used to operate the system on election day and to tally the votes cast is publicly accessible and may be used to independently verify the accuracy and reliability of the operating and tallying procedures to be employed at any election.

SECTION 4. **Initial applicability.**

X (1) This act first applies to with respect to elections held on the effective date of this subsection.

→ insert JTK

(End)

ASSEMBLY AMENDMENT ,
TO 2005 ASSEMBLY BILL 63

FWS / A

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 10: after "electors," insert "electronic voting system standards,".

3 2. Page 3, line 4: after that line insert:

4 ~~SECTION 1m~~ 5.91 (18) of the statutes is amended to read:

as created by 2003 Wisconsin Act 265,

5 5.91 (18) ~~It produces a permanent paper record of the vote~~ If the device consists
6 of an electronic voting machine, it generates a complete paper ballot showing all
7 offices and questions and all votes cast by each elector at the time that it is cast that
8 is ^{visually} verifiable by the elector before the elector leaves the machine and that enables a
9 manual count or recount of the elector's each vote cast by the elector.

10

(END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2044/1ins2
JTK.....

RWS 2A

NOP

There is no requirement pertaining to accessibility or independent verification of software that is used to operate a system or to tally the votes cast.

(A) This bill provides that if a municipality uses an electronic voting system that consists of a voting machine, the machine must generate a complete paper ballot showing all offices and questions and all votes cast by each elector that is visually verifiable by the elector before the elector leaves the machine and that enables a manual count or recount of each vote cast by the elector.

(B) The bill also provides that the coding for the software that is used to operate the system on election day and to tally the votes cast must be publicly accessible and must be able to be used to independently verify the accuracy and reliability of the operating and tallying procedures to be employed at an election. In addition, the bill provides that each municipal clerk or board of election commissioners of a municipality that uses an electronic voting system for voting at an election shall provide to any person, upon request, at municipal expense, the coding for the software that the municipality uses to operate the system and to tally the votes cast.

+

2005

Nonstat File Sequence: **FFF**

LRB 2044 / 1
JK : _____

EFFECTIVE DATE

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdate**
For the text, execute: **create** → **text:** → *NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

*Insert
STK*

SECTION # _____ . Effective date.

(#1) () This act takes effect
on January 1, 2006 @

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdateE**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # _____ . Effective dates;

..... This act takes effect on the day after publication, except as follows:

(#1) () The treatment of
sections
of the statutes takes effect on

1. In the component bar: For the budget action phrase, execute:..**create** → **action:** → *NS: → **94XX**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the **9400** department code.

SECTION 94 _____ . Effective dates;

(#1) () The treatment of
sections
of the statutes takes effect on

Kuesel, Jeffery

From: Wavrunek, Glenn
Sent: Thursday, July 07, 2005 2:40 PM
To: Kuesel, Jeffery
Subject: Change to LRB-2044/1 (relating to: electronic voting system standards)

Jeff -

We were wondering if you could alter LRB-2044/1 for us:

1 - Delete all references to the public having full access to source codes for the software that the machine uses.

2 - Follow IL's lead on the issue and insert language on how they handle the source code concern (Public Act 093-0574):

Sec. 23-15.1. Production of ballot counting code and attendance of witnesses. All voting-system vendors shall, within 90 days after the adoption of rules or upon application for voting-system approval, place in escrow all computer code for its voting system with the State Board of Elections. The State Board of Elections shall promulgate rules to implement this Section. For purposes of this Section, the term "computer code" includes, but is not limited to, ballot counting source code, table structures, modules, program narratives, and other human readable computer instructions used to count ballots. Any computer code submitted by vendors to the State Board of Elections shall be considered strictly confidential and the intellectual property of the vendors and shall not be subject to public disclosure under the Freedom of Information Act.

The State Board of Elections shall determine which software components of a voting system it deems necessary to enable the review and verification of the computer. The State Board of Elections shall secure and maintain all proprietary computer codes in strict confidence and shall make a computer code available to authorized persons in connection with an election contest or pursuant to any State or federal court order. In an election contest, each party to the contest may designate one or more persons who are authorized to receive the computer code of the relevant voting systems. The person or persons authorized to receive the relevant computer code shall enter into a confidentiality agreement with the State Board of Elections and must exercise the highest degree of reasonable care to maintain the confidentiality of all proprietary information. The State Board of Elections shall promulgate rules to provide for the security, review, and verification of computer codes. Verification includes, but is not limited to, determining that the computer code corresponds to computer instructions actually in use to count ballots. Nothing in this Section shall impair the obligation of any contract between a voting-systems vendor and an election authority that provides access to computer code that is equal to or greater than that provided by this Section.

Please feel free to call me at 266-8570 if you have any questions. Thanks,

Glenn Wavrunek
Office of Rep. Mark Pocan



(DRAFT)
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2044/1 2

JTK:kjf:gh

Tue 7/12

2005 BILL

1 AN ACT to amend 5.84 (title) and 5.91 (18); and to create 5.84 (3) and 5.91 (19)

2 of the statutes; **relating to:** electronic voting system standards

and software components and granting rule-making authority

Analysis by the Legislative Reference Bureau

Currently, with limited exceptions, every municipality with a population of 7,500 or more must use voting machines or an electronic voting system at all primaries and other elections held in the municipality. Either mechanical or electronic voting machines may be used. No electronic voting system, including an electronic voting machine, may be used unless the system meets statutory standards and is approved by the State Elections Board for use at elections held in this state. The system must enable an elector to privately verify the votes selected by the elector before casting his or her ballot. All electronic voting systems must be tested publicly before each election to determine if they are functioning properly. If voting machines are used, ballots need not be printed and distributed to electors, but if electronic voting machines are used, the machines must maintain a cumulative tally of votes cast that is retrievable in the event of a power outage, evacuation, or malfunction so that the record of the votes cast prior to the time that the problem occurs is preserved, and the machines must produce a permanent paper of record of the vote cast by each elector at the time that it is cast that enables a manual count or recount of the elector's vote.

Currently, there

There is no requirement pertaining to accessibility or independent verification of software that is used to operate a system or to tally the votes cast.

record and

This bill provides that if a municipality uses an electronic voting system that consists of a voting machine, the machine must generate a complete paper ballot

BILL

Prs 2 A

showing all offices and questions and all votes cast by each elector that is visually verifiable by the elector before the elector leaves the machine and that enables a manual count or recount of each vote cast by the elector.

The bill also provides that the coding for the software that is used to operate the system on election day and to tally the votes cast must be publicly accessible and must be able to be used to independently verify the accuracy and reliability of the operating and tallying procedures to be employed at an election. In addition, the bill provides that each municipal clerk or board of election commissioners of a municipality that uses an electronic voting system for voting at an election shall provide to any person, upon request, at municipal expense, the coding for the software that the municipality uses to operate the system and to tally the votes cast.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

State and

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

Prs

2-11

SECTION 1. 5.84 (title) of the statutes is amended to read:

5.84 (title) Testing of equipment; eustody of requirements for programs and ballots.

SECTION 2. 5.84 (3) of the statutes is created to read:

5.84 (3) If a municipality uses an electronic voting system for voting at any election, the municipal clerk shall provide to any person, upon request, at the expense of the municipality, the coding for the software that the municipality uses to operate the system and to tally the votes cast.

SECTION 3. 5.91 (18) of the statutes, as created by 2003 Wisconsin Act 265, is amended to read:

5.91 (18) ~~It produces a permanent paper record of the vote~~ If the device consists of an electronic voting machine, it generates a complete paper ballot showing all offices and questions and all votes cast by each elector at the time that it is cast that is visually verifiable by the elector before the elector leaves the machine and that enables a manual count or recount of the elector's each vote cast by the elector.

BILL

1 **SECTION 4.** ~~5.91 (19)~~ of the statutes is created to read:

2 ~~5.91 (19)~~ The coding for the software that is used to operate the system on
3 election day and to tally the votes cast is publicly accessible and may be used to
4 independently verify the accuracy and reliability of the operating and tallying
5 procedures to be employed at any election.

6 **SECTION 5. Initial applicability.**

7 (1) This act first applies with respect to elections held on the effective date of
8 this subsection.

9 **SECTION 6. Effective date.**

10 (1) This act takes effect on January 1, 2006

*or on the day after publication,
whichever is later*

11 (END)

*INS
3-1*

*insert
INS
3-5
here*

10

D-Note

**2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2044/2ins2
JTK.....

aws 2A

X
The bill also directs the Elections Board to promulgate rules to ensure the security, review and verification of software components used with each electronic voting system approved by the board for use at elections in this state. Under the bill, the board must require each vendor of an electronic voting system to place its software components in escrow with the board. The bill prohibits the board from providing access to the components to any person except in a recount of an election. If a valid petition for a recount is filed in an election in which an electronic voting system is used to record and tally the votes cast, the board must provide access to the software components used to record and tally the votes to one or more persons designated by each party to the recount if each designee first enters into an agreement with the board under which the designee agrees to maintain the confidentiality of all proprietary information provided to the designee. The bill permits a county or municipality to contract with the vendor of an electronic voting system to permit a greater degree of access to software components used with the system than is otherwise authorized under the bill.

JWS 2-1

SECTION 1. 5.905 of the statutes is created to read:

5.905 Software components. (1) In this section, "software component" includes vote-counting source code, table structures, modules, program narratives and other human-readable computer instructions used to count votes with an electronic voting system.

(2) The board shall determine which software components of an electronic voting system it considers to be necessary to enable review and verification of the accuracy of the automatic tabulating equipment used to record and tally the votes cast with the system. The board shall require each vendor of an electronic voting system that is approved under s. 5.91 to place those software components in escrow with the board within 90 days of the date of approval of the system and within 10 days of the date of any subsequent change in the components. The board shall secure and maintain those software components in strict confidence except as authorized in this section. Unless authorized under this section, the board shall withhold access to those software components from any person who requests access under s. 19.35 (1).

X (3) The board shall promulgate rules to ensure the security, review, and verification of software components used with each electronic voting system approved by the board. The verification procedure shall include determination that the software components correspond to the instructions actually used by the system to count votes.

(4) If a valid petition for a recount is filed under s. 9.01 in an election at which an electronic voting system was used to record and tally the votes cast, each party

to the recount may designate one or more persons who are authorized to receive access to the software components that were used to record and tally the votes in the election. The board shall grant access to the software components to each designated person if, before receiving access, the person enters into a written agreement with the board that obligates the person to exercise the highest degree of reasonable care to maintain the confidentiality of all proprietary information to which the person is provided access, unless otherwise permitted in a contract entered into under sub. (5).

(5) A county or municipality may contract with the vendor of an electronic voting system to permit a greater degree of access to software components used with the system than is required under sub. (4).

SECTION 2. Nonstatutory provisions.

(1) Each vendor of an electronic voting system that is approved for use in this state under section 5.91 of the statutes on the effective date of this subsection or that obtains such approval for its system before the effective date of rules promulgated by the board under section 5.095 (3) of the statutes, as created by this act, shall provide to the ~~Elections Board~~ the software components required under section 5.905 (2) of the statutes, as created by this act, no later than 90 days after the effective date of those rules.

FWS
3-5

X
X

5.905

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2044/2dn

JTK. *bjf*

Date

Representative Pocan:

1. Do you want to authorize emergency rules to be promulgated under this draft without the necessity of a finding of emergency and if so, do you want to allow the emergency rules to remain in effect until permanent rules are promulgated?
2. It occurs to me that if a confidentiality agreement under this draft is breached, the Elections Board may decide not to seek redress, and even if it does, it may not suffer significant monetary damages. The vendor, however, may be damaged significantly. Do you want to allow an electronic voting system vendor to file suit against and collect damages from a person who breaches a confidentiality agreement with the Elections Board?

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2044/2dn
JTK:kjf:pg

July 11, 2005

Representative Pocan:

1. Do you want to authorize emergency rules to be promulgated under this draft without the necessity of a finding of emergency and if so, do you want to allow the emergency rules to remain in effect until permanent rules are promulgated?
2. It occurs to me that if a confidentiality agreement under this draft is breached, the Elections Board may decide not to seek redress, and even if it does, it may not suffer significant monetary damages. The vendor, however, may be damaged significantly. Do you want to allow an electronic voting system vendor to file suit against and collect damages from a person who breaches a confidentiality agreement with the Elections Board?

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

From: Wavrunek, Glenn
Sent: Monday, July 18, 2005 10:15 AM
To: Kuesel, Jeffery
Subject: RE: Change to LRB-2044/1 (relating to: electronic voting system standards)

Jeff -

Upon further review, Mark wants to go back to the /1 version of the bill, but with two minor changes (attached -- delete the words "all offices and questions and" that appear twice on page 2). Any questions, please feel free to call me at 266-8570. Thanks!

-glenn



05-20441 with
changes.pdf

From: Kuesel, Jeffery
Sent: Friday, July 08, 2005 11:32 AM
To: Wavrunek, Glenn
Subject: RE: Change to LRB-2044/1 (relating to: electronic voting system standards)

Glenn,

I incorporated the changes you asked for. I had to reorder and clarify some of the language, but I think the substance is maintained, I also attached a drafter's note with a couple of questions for you to think about when you review the draft.

Jeff Kuesel

-----Original Message-----

From: Wavrunek, Glenn
Sent: Thursday, July 07, 2005 2:40 PM
To: Kuesel, Jeffery
Subject: Change to LRB-2044/1 (relating to: electronic voting system standards)

Jeff -

We were wondering if you could alter LRB-2044/1 for us:

1 - Delete all references to the public having full access to source codes for the software that the machine uses.

2 - Follow IL's lead on the issue and insert language on how they handle the source code concern (Public Act 093-0574):

Sec. 23-15.1. Production of ballot counting code and attendance of witnesses. All voting-system vendors shall, within 90 days after the adoption of rules or upon application for voting-system approval, place in escrow all computer code for its voting system with the State Board of Elections.

The State Board of Elections shall promulgate rules to implement this Section. For purposes of this Section, the term "computer code" includes, but is not limited to, ballot counting source code, table structures, modules, program narratives, and other human readable computer instructions used to count ballots. Any computer code submitted by vendors to the State Board of Elections shall be considered strictly confidential and the intellectual property of the vendors and shall not be subject to public disclosure under the Freedom of Information Act.

The State Board of Elections shall determine which software components of a voting system it deems necessary to enable the review and verification of the computer. The State Board of Elections shall secure and maintain all proprietary computer codes in strict confidence and shall make a computer code available to authorized persons in connection with an election contest or pursuant to any State or federal court order. In an election contest, each party to the contest may designate one or more persons who are authorized to receive the computer code of the relevant voting systems. The person or persons authorized to receive the relevant computer code shall enter into a confidentiality agreement with the State Board of Elections and must exercise the highest degree of reasonable care to maintain the confidentiality of all proprietary information. The State Board of Elections shall promulgate rules to provide for the security, review, and verification of computer codes. Verification includes, but is not limited to, determining that the computer code corresponds to computer instructions actually in use to count ballots. Nothing in this Section shall impair the obligation of any contract between a voting-systems vendor and an election authority that provides access to computer code that is equal to or greater than that provided by this Section.

Please feel free to call me at 266-8570 if you have any questions. Thanks,

Glenn Wavrunek
Office of Rep. Mark Pocan

Thu 7/28

2005 BILL

Regen

1 AN ACT to amend 5.84 (title) and 5.91 (18); and to create 5.84 (3) and 5.91 (19)
2 of the statutes; relating to: electronic voting system standards.

Analysis by the Legislative Reference Bureau

Currently, with limited exceptions, every municipality with a population of 7,500 or more must use voting machines or an electronic voting system at all primaries and other elections held in the municipality. Either mechanical or electronic voting machines may be used. No electronic voting system, including an electronic voting machine, may be used unless the system meets statutory standards and is approved by the State Elections Board for use at elections held in this state. The system must enable an elector to privately verify the votes selected by the elector before casting his or her ballot. All electronic voting systems must be tested publicly before each election to determine if they are functioning properly. If voting machines are used, ballots need not be printed and distributed to electors, but if electronic voting machines are used, the machines must maintain a cumulative tally of votes cast that is retrievable in the event of a power outage, evacuation, or malfunction so that the record of the votes cast prior to the time that the problem occurs is preserved, and the machines must produce a permanent paper of record of the vote cast by each elector at the time that it is cast that enables a manual count or recount of the elector's vote.

NOTE: Currently

There is no requirement pertaining to accessibility or independent verification of software that is used to operate a system or to tally the votes cast.

record and

This bill provides that if a municipality uses an electronic voting system that consists of a voting machine, the machine must generate a complete paper ballot

BILL

showing ~~all offices and questions~~ and all votes cast by each elector that is visually verifiable by the elector before the elector leaves the machine and that enables a manual count or recount of each vote cast by the elector.

The bill also provides that the coding for the software that is used to operate the system on election day and to tally the votes cast must be publicly accessible and must be able to be used to independently verify the accuracy and reliability of the operating and tallying procedures to be employed at an election. In addition, the bill provides that each municipal clerk or board of election commissioners of a municipality that uses an electronic voting system for voting at an election shall provide to any person, upon request, at municipal expense, the coding for the software that the municipality uses to operate the system and to tally the votes cast.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 5.84 (title) of the statutes is amended to read:

2 **5.84 (title) Testing of equipment; ~~eustody~~ of requirements for programs**
3 **and ballots.**

4 SECTION 2. 5.84 (3) of the statutes is created to read:

5 5.84 (3) If a municipality uses an electronic voting system for voting at any
6 election, the municipal clerk shall provide to any person, upon request, at the
7 expense of the municipality, the coding for the software that the municipality uses
8 to operate the system and to tally the votes cast.

9 SECTION 3. 5.91 (18) of the statutes, as created by 2003 Wisconsin Act 265, is
10 amended to read:

11 5.91 (18) ~~It produces a permanent paper record of the vote~~ If the device consists
12 of an electronic voting machine, it generates a complete paper ballot showing all
13 offices and questions and all votes cast by each elector at the time that it is cast that
14 is visually verifiable by the elector before the elector leaves the machine and that
15 enables a manual count or recount of ~~the elector's~~ each vote cast by the elector.

BILL

1 **SECTION 4.** 5.91 (19) of the statutes is created to read:

2 5.91 (19) The coding for the software that is used to operate the system on
3 election day and to tally the votes cast is publicly accessible and may be used to
4 independently verify the accuracy and reliability of the operating and tallying
5 procedures to be employed at any election.

6 **SECTION 5. Initial applicability.**

7 (1) This act first applies with respect to elections held on the effective date of
8 this subsection.

9 **SECTION 6. Effective date.**

10 (1) This act takes effect on January 1, 2006

*for the day after publication
whichever is later*

11

(END)

Northrop, Lori

From: Wavrunek, Glenn
Sent: Monday, August 01, 2005 11:27 AM
To: LRB.Legal
Subject: Draft review: LRB 05-2044/3 Topic: Use of electronic voting machines; open source coding

It has been requested by <Wavrunek, Glenn> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2044/3 Topic: Use of electronic voting machines; open source coding