



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 637

**Assembly Substitute
Amendment 3, as Amended**

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Contact: Jessica Karls-Ruplinger, Deputy Director

Under current law, if an elector votes by absentee ballot at the municipal clerk's office, the elector places his or her ballot in an absentee envelope, and, on Election Day, election officials open the absentee envelope and deposit the ballot into voting equipment.

2017 Assembly Bill 637, and Assembly Substitute Amendment 3 to the bill, create an "absentee voting efficiency option" (AVEO), a procedure whereby an elector may cast a ballot prior to Election Day by casting a ballot into an electronic voting system¹ at the municipal clerk's office. In addition, Assembly Substitute Amendment 3 contains provisions relating to deceased electors, challenging electors, and write-in votes. This memorandum describes Assembly Substitute Amendment 3 to the bill and Assembly Amendments 2, 9, 11, and 12 to the substitute amendment.

ASSEMBLY SUBSTITUTE AMENDMENT 3

Absentee Voting Efficiency Option

Assembly Substitute Amendment 3 allows an elector, prior to Election Day,² to cast a ballot using AVEO, if the governing body of the municipality has enacted an ordinance or adopted a resolution to allow such voting and the Elections Commission has certified the

¹ "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. [s. 5.02 (4m), Stats.]

² Under the substitute amendment, an elector may vote using AVEO during the time period prescribed for in-person absentee voting, but only after the municipality has completed a successful public test of the programmed media necessary for AVEO and the test occurs no more than 10 days prior to the use of the media for AVEO.

municipality to conduct such voting. If a governing body allows AVEO, the municipality must use that procedure for all subsequent elections until such time that the governing body enacts an ordinance or adopts a resolution repealing the use of AVEO.³ Votes cast under AVEO may not be tabulated until the closing of the polls on Election Day.

Under the substitute amendment, the Elections Commission must establish procedures for certifying municipalities to conduct voting under AVEO. The governing body of a municipality wishing to obtain certification for AVEO must send a plan for administering the AVEO process to the commission for review no later than 30 days prior to the first day on which the municipality would conduct voting under AVEO. [**Assembly Amendment 9** to the substitute amendment increases the 30-day period to 60 days.] The commission must review the plan and give notice of approval or of changes needed to receive approval no later than 10 days after receiving the plan. [**Assembly Amendment 9** to the substitute amendment increases the 10-day period to 20 days.]

The substitute amendment requires the Elections Commission to certify a municipality to conduct voting under AVEO if it determines that the municipality satisfies all of the following:

- Its governing body has approved the use of AVEO.
- It is using equipment capable of capturing a digital image of both the front and back of the ballot.
- It is using an electronic voting system that includes a report function capable of reporting write-in votes by scanning the ballots and electronically capturing the write-in votes. [**Assembly Amendment 11** to the substitute amendment deletes this requirement.]
- It has Internet access at each location where voting will be conducted under AVEO so that an absentee ballot may be issued to an elector using the Statewide Voter Registration System immediately prior to the elector casting his or her ballot and so that the clerk or clerk's designee may add new or changed registration information prior to issuing an absentee ballot.
- It is able to update its Internet site at the end of each day.
- It is capable of adequately securing all equipment and ballots in a double-lock location.

³ Under the substitute amendment, AVEO does not preclude the clerk from using absentee envelopes when the clerk or the elector determines that such use is necessary. AVEO may occur simultaneously or in conjunction with making an application in person using absentee envelopes, but the periods for voting using AVEO and for making an application in person using absentee envelopes need not be the same.

- Its plan for administering AVEO satisfies all other requirements set forth in the substitute amendment.

The substitute amendment contains additional requirements for AVEO, including provisions relating to: requests for ballots under AVEO; defective ballots; daily reconciliation of ballots; testing of voting equipment; and security procedures. In addition, it provides that no person may act 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 under AVEO before the close of the polls on Election Day. A person who violates this provision is guilty of a Class I felony.⁴

Lastly, the substitute amendment provides that the following statutes apply to voting conduct under AVEO: s. 7.41, Stats., regarding the public's right to access the polling place; s. 6.82, Stats., regarding assisting electors; s. 5.25 (4) (a), Stats., regarding the availability of accessible systems; and s. 6.84 (1), Stats., regarding the privilege of absentee voting. **Assembly Amendment 2** to the substitute amendment also provides that, with respect to matters relating to the absentee ballot process, the subchapter of the statutes relating to AVEO (subch. VI of ch. 6, Stats.) must be construed as mandatory.

Deceased Electors

Under current law, when by due proof it appears to the election officials that a person casting an absentee ballot at an election has died before Election Day, the officials must return the ballot with defective ballots to the issuing official and may not count the ballot.

Assembly Substitute Amendment 3 repeals this provision. **Assembly Amendment 12** to the substitute amendment repeals additional statutory provisions that prohibit election officials from counting an absentee ballot if proof is submitted to the officials that the elector voting the absentee ballot has died before Election Day.

Challenging Electors

Under current law, an election inspector must challenge for cause any person offering to vote whom the inspector knows or suspects is not a qualified elector or who does not adhere to any voting requirement. In addition, if an elector challenges a person offering to vote, an inspector administers the challenge process outlined in state law.

Assembly Substitute Amendment 3 allows a clerk or deputy clerk to also challenge for cause any person offering to vote and, if an elector challenges a person offering to vote, allows a clerk or deputy clerk to administer the challenge process. In addition, it provides that the vote of any voter, including an absent voter, may be challenged at the polling place, at the municipal

⁴ The penalty for a Class I felony is a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both. [s. 939.50 (3) (i), Stats.]

clerk's office during the period for in-person absentee voting, at the municipal clerk's office during the period for AVEO, or at a central count location.

Write-In Votes

Under current law, election officials must examine the ballots or record of votes cast for write-in votes and must count and tabulate the write-in votes in accordance with state law.

Assembly Substitute amendment 3 provides an exception to this provision when using a report function capable of reporting write-in votes by scanning the ballots and electronically capturing the write-in votes.

BILL HISTORY

On February 9, 2018, Assembly Substitute Amendment 3 was offered by Representative Brandtjen. On February 13, 2018, Assembly Amendments 2 and 9 to the substitute amendment were offered by Representatives Kessler, C. Taylor, and Zamarripa and Assembly Amendment 11 to the substitute amendment was offered by Representative Brandtjen. On February 19, 2018, Assembly Amendment 12 to the substitute amendment was offered by Representatives Brandtjen and Bernier.

On February 14, 2018, the Assembly Committee on Campaigns and Elections recommended all of the following: (a) adoption of Assembly Amendment 2 to Assembly Substitute Amendment 3 on a vote of Ayes, 8; Noes, 1; (b) adoption of Assembly Amendments 9 and 11 to Assembly Substitute Amendment 3 on votes of Ayes, 9; Noes, 0; (c) adoption of Assembly Substitute Amendment 3, as amended, on a vote of Ayes, 6; Noes, 3; and (d) passage of Assembly Bill 637, as amended, on a vote of Ayes, 6; Noes, 3.

On February 20, 2018, the Assembly adopted Assembly Amendments 2, 9, 11, and 12 to Assembly Substitute Amendment 3; adopted Assembly Substitute Amendment 3, as amended; and passed Assembly Bill 637, as amended, on voice votes.

JKR:ksm