



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0217/1
JK:jld/kjf/amn

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 637**

January 29, 2018 - Offered by Representative BRANDTJEN.

1 **AN ACT** *to renumber and amend* 5.84 (1); *to amend* 6.21; and *to create* 5.84
2 (1) (b), 5.91 (19) and subchapter VI of chapter 6 [precedes 6.981] of the statutes;
3 **relating to:** using an electronic voting machine to cast a vote with an in-person
4 absentee ballot and providing a criminal penalty.

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

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

7 5.84 (1) (a) Where Except as provided in par. (b), where any municipality
8 employs an electronic voting system which utilizes automatic tabulating equipment,
9 either at the polling place or at a central counting location, the municipal clerk shall,
10 on any day not more than 10 days prior to the election day on which the equipment
11 is to be utilized, have the equipment tested to ascertain that it will correctly count

1 the votes cast for all offices and on all measures. Public notice of the time and place
2 of the test shall be given by the clerk at least 48 hours prior to the test by publication
3 of a class 1 notice under ch. 985 in one or more newspapers published within the
4 municipality if a newspaper is published therein, otherwise in a newspaper of
5 general circulation therein. The test shall be open to the public. The test shall be
6 conducted by processing a preaudited group of ballots so marked as to record a
7 predetermined number of valid votes for each candidate and on each referendum.
8 The test shall include for each office one or more ballots which have votes in excess
9 of the number allowed by law and, for a partisan primary election, one or more ballots
10 which have votes cast for candidates of more than one recognized political party, in
11 order to test the ability of the automatic tabulating equipment to reject such votes.
12 If any error is detected, the municipal clerk shall ascertain the cause and correct the
13 error. The clerk shall make an errorless count before the automatic tabulating
14 equipment is approved by the clerk for use in the election.

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

16 5.84 (1) (b) For a municipality that authorizes the absentee voting efficiency
17 option under subch. VI of ch. 6, the municipal clerk shall have the automatic
18 tabulating equipment tested, as provided under par. (a), on any day not more than
19 10 days prior to the first day on which such voting is available in the municipality
20 pursuant to s. 6.981.

21 **SECTION 3.** 5.91 (19) of the statutes is created to read:

22 5.91 (19) For certifications made under this section on or after the effective date
23 of this subsection [LRB inserts date], if the device consists of an electronic voting
24 machine, it includes a report function that is capable of reporting write-in votes by
25 scanning the ballots and electronically capturing the write-in votes. If a device

1 certified before the effective date of this subsection [LRB inserts date], consists
2 of an electronic voting machine with such a report function, an election official may
3 use that function to count write-in votes, as provided in s. 7.50 (2) (d) to (j), after the
4 commission has tested the function.

5 **SECTION 4.** 6.21 of the statutes is amended to read:

6 **6.21 Deceased electors.** ~~When~~ Except as provided in s. 6.982 (9), when by
7 due proof it appears to the inspectors or, in municipalities where absentee ballots are
8 canvassed under s. 7.52, when by due proof it appears to the board of absentee ballot
9 canvassers that a person casting an absentee ballot at an election has died before the
10 date of the election, the inspectors or board of absentee ballot canvassers shall return
11 the ballot with defective ballots to the issuing official. The casting of the ballot of a
12 deceased elector does not invalidate the election.

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

15 **CHAPTER 6**

16 **SUBCHAPTER VI**

17 **ABSENTEE VOTING EFFICIENCY OPTION**

18 **6.981 Efficiency option.** (1) (a) The municipal clerk shall complete the
19 application as provided under s. 6.87 (1) and allow an elector to cast a ballot prior to
20 election day by casting a ballot into an electronic voting system as provided under
21 s. 6.80 at the municipal clerk's office, if the governing body of the municipality has
22 enacted an ordinance or adopted a resolution to allow such voting and the
23 commission has certified the municipality under s. 6.982 (9) (a) to conduct such
24 voting. An elector may vote under this subchapter during the time prescribed for an
25 application made in person pursuant to s. 6.86 (1) (b), but only after the municipality

1 has completed a successful public test of the programmed media necessary to vote
2 under this subchapter and the test occurs no more than 10 days prior to the use of
3 the media for voting under this subchapter. A municipality shall specify the
4 locations, dates, and hours for voting in the notice under s. 10.01 (2) (e). The
5 municipal clerk, or his or her designee, shall send the notice to the 2 major political
6 parties, as defined in s. 13.46 (5), on the same date as the notice is posted for the
7 general public.

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

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

20 **6.982 Administration.** (1) (a) Votes cast under s. 6.981 may not be tabulated
21 until the closing of the polls on election day, but the municipal clerk shall publish on
22 the municipality's Internet site a daily tally of the total number of ballots cast under
23 s. 6.981 in the municipality.

24 (b) No person may act in any manner that would give him or her the ability to
25 know or to provide information on the accumulating or final results from the ballots

1 cast under s. 6.981 before the close of the polls on election day. A person who violates
2 this paragraph is guilty of a Class I felony.

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

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

19 **(2)** At all times when the process for voting under this subchapter is in use the
20 municipality shall have at least 2 individuals present, not including an elector. The
21 tabulation equipment shall be in a location that is visible to the clerk or the clerk's
22 designee and to at least one other person. Automatic tabulating equipment used for
23 purposes of this subchapter shall be secured with a tamper-evident security seal and
24 the clerk or the clerk's designee, in the presence of at least one witness, shall check
25 the seals for tampering at the beginning and ending of each day designated for voting

1 under s. 6.981. The areas where the programmed media and the ballots cast are
2 housed shall be secured with tamper-evident security seals. At least 2 persons shall
3 be present for any administrative process that requires access to a sealed area and
4 the breaking of a tamper-evident security seal, including clearing a jammed ballot
5 or emptying a full ballot bin. The clerk or clerk's designee shall daily document all
6 checks and record any such activity and reason in which a seal is broken and replaced
7 under this subsection. The clerk or clerk's designee shall obtain the signature of any
8 witness who was present when any such activity is performed. When not in use the
9 tabulation equipment and the cast ballots sealed inside tamper-evident security
10 seal ballot bags shall be secured in a double-lock location such as a locked cabinet
11 inside a locked office.

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

23 **(4)** (a) Except as provided in par. (b), an elector shall sign an absentee ballot
24 certification request log for purposes of this subchapter. The municipal clerk shall
25 have the elector provide an electronic or a handwritten signature, but if the clerk

1 allows the use of electronic signatures, the clerk shall not generate a final absentee
2 ballot log until after the last day designated for voting under s. 6.981.

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

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

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

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

22 **(7)** If an elector makes a challenge for cause in person, as provided under s.
23 6.925, with regard to any person offering to vote under this subchapter, the clerk
24 shall place the ballot in an absentee ballot envelope and send the envelope to the
25 polling place to be challenged under s. 6.93. For purposes of making a challenge as

1 described under this subsection, the elector requesting a ballot to whom the
2 challenge applies shall state aloud his or her name and address.

3 (8) (a) The commission shall establish procedures for certifying municipalities
4 to conduct voting under s. 6.981. The governing body of a municipality wishing to
5 obtain certification under this paragraph shall send a plan for administering the
6 process under this subchapter to the commission for review no later than 30 days
7 prior to the first day on which the municipality would conduct voting under s. 6.981.
8 The commission shall review the plan and give notice of approval or of changes
9 needed to receive approval no later than 10 days after receiving the plan. The
10 commission may send notice to the municipality by electronic mail. The commission
11 shall certify a municipality to conduct voting under s. 6.981 if it determines that the
12 municipality satisfies all of the following:

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

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

17 3. It has Internet access at each location where voting will be conducted under
18 this subchapter so that an absentee ballot may be issued to an elector using the
19 statewide voter registration system immediately prior to the elector casting his or
20 her ballot and so that the clerk or clerk's designee may add new or changed
21 registration information prior to issuing an absentee ballot.

22 4. It is able to update its Internet site at the end of each day.

23 5. It is capable of adequately securing all equipment and ballots in a
24 double-lock location.

1 6. Its plan for administering the process under this subchapter satisfies all
2 other requirements set forth in this subchapter.

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

7 **(9)** (a) If, prior to the close of the polls on election day, the municipal clerk is
8 made aware that an elector who voted as provided under s. 6.981 has died, the clerk
9 shall direct 2 election inspectors at the polling place or central count location, as
10 applicable, to randomly pull a ballot from the ballot bag of the deceased elector’s ward
11 from the day on which the deceased elector cast his or her ballot.

12 (b) The tally for all ballots pulled under par. (a) shall be removed from the final
13 tabulated results of the applicable reporting unit. All ballots pulled under par. (a)
14 shall be placed in a separate sealed bag that is marked “Deceased Electors.” The
15 inspectors shall make a notation on the election day inspectors statement incident
16 log identifying the deceased electors and the ballot bag security seal number
17 containing the ballots pulled under par. (a).

18 **(END)**