



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0292/1
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**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO ASSEMBLY BILL 637**

February 6, 2018 - Offered by Representative BRANDTJEN.

1 **AN ACT** *to renumber and amend* 5.84 (1); *to amend* 5.85 (2) (a), 6.92 (1), 6.925,
2 6.94 and 6.95; and *to create* 5.84 (1) (b), 5.91 (19) and subchapter VI of chapter
3 6 [precedes 6.981] of the statutes; **relating to:** using an electronic voting
4 machine to cast a vote with an in-person absentee ballot and providing a
5 criminal penalty.

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

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

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

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

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

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

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

23 5.85 (2) (a) The Except as provided in s. 5.91 (19), the election officials shall
24 examine the ballots or record of votes cast for write-in votes and shall count and
25 tabulate the write-in votes. The election officials shall count write-in votes as

1 provided in s. 7.50 (2) (d). When an electronic voting system is used in which ballots
2 are distributed to electors, before separating the remaining ballots from their
3 respective covering envelopes, the election officials shall examine the ballots for
4 write-in votes. When an elector has cast a write-in vote, the election officials shall
5 compare the write-in vote with the votes on the ballot to determine whether the
6 write-in vote results in an overvote for any office. In case of an overvote for any office,
7 the election officials shall follow the procedure in par. (b).

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

9 5.91 (19) For certifications made under this section on or after the effective date
10 of this subsection [LRB inserts date], if the device consists of an electronic voting
11 machine, it includes a report function that is capable of reporting write-in votes by
12 scanning the ballots and electronically capturing the write-in votes. If a device
13 certified before the effective date of this subsection [LRB inserts date], consists
14 of an electronic voting machine with such a report function, an election official may
15 use that function to count write-in votes, as provided in s. 7.50 (2) (d) to (j), after the
16 commission has tested the function.

17 **SECTION 5.** 6.92 (1) of the statutes is amended to read:

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

1 elector of this election”; and shall then ask questions which are appropriate as
2 determined by the commission, by rule, to test the person’s qualifications.

3 **SECTION 6.** 6.925 of the statutes is amended to read:

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

17 **SECTION 7.** 6.94 of the statutes is amended to read:

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

1 s. 6.02 (2); you have not voted at this election; you have not made any bet or wager
2 or become directly or indirectly interested in any bet or wager depending upon the
3 result of this election; you are not on any other ground disqualified to vote at this
4 election”. If the person challenged refuses to take the oath or affirmation, the
5 person’s vote shall be rejected. If the person challenged answers fully all relevant
6 questions put to the elector by the clerk, deputy clerk, or inspector under s. 6.92,
7 takes the oath or affirmation, and fulfills the applicable registration requirements,
8 and if the answers to the questions given by the person indicate that the person meets
9 the voting qualification requirements, the person’s vote shall be received.

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

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

1 s. 7.60, a challenge may be reviewed by the county board of canvassers. If the returns
2 are reported under s. 7.70, a challenge may be reviewed by the chairperson of the
3 commission or the chairperson's designee. The decision of any board of canvassers
4 or of the chairperson or chairperson's designee may be appealed under s. 9.01. The
5 standard for disqualification specified in s. 6.325 shall be used to determine the
6 validity of challenged ballots.

7 **SECTION 9.** Subchapter VI of chapter 6 [precedes 6.981] of the statutes is
8 created to read:

9 **CHAPTER 6**

10 **SUBCHAPTER VI**

11 **ABSENTEE VOTING EFFICIENCY OPTION**

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

1 designee, shall send the notice to the 2 major political parties, as defined in s. 13.46
2 (5), on the 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).

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

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) Except as provided in par. (b), an elector shall sign an absentee ballot
19 certification request log for purposes of this subchapter. The municipal clerk shall
20 have the elector provide an electronic or a handwritten signature, but if the clerk
21 allows the use of electronic signatures, the clerk shall not generate a final absentee
22 ballot log until after the last day designated for voting under s. 6.981.

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

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

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

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

18 **(8)** (a) The commission shall establish procedures for certifying municipalities
19 to conduct voting under s. 6.981. The governing body of a municipality wishing to
20 obtain certification under this paragraph shall send a plan for administering the
21 process under this subchapter to the commission for review no later than 30 days
22 prior to the first day on which the municipality would conduct voting under s. 6.981.
23 The commission shall review the plan and give notice of approval or of changes
24 needed to receive approval no later than 10 days after receiving the plan. The
25 commission may send notice to the municipality by electronic mail. The commission

1 shall certify a municipality to conduct voting under s. 6.981 if it determines that the
2 municipality satisfies all of the following:

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

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

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

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

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

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

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

21 (END)