



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBs0300/2
JK:jld/kjf/amn

**ASSEMBLY SUBSTITUTE AMENDMENT 3,
TO ASSEMBLY BILL 637**

February 9, 2018 - Offered by Representative BRANDTJEN.

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

Analysis by the Legislative Reference Bureau

This substitute amendment 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 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 substitute amendment 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 substitute amendment, 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 substitute amendment.

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 substitute amendment 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 substitute amendment 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
10 of a class 1 notice under ch. 985 in one or more newspapers published within the
11 municipality if a newspaper is published therein, otherwise in a newspaper of

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

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

12 5.84 (1) (b) For a municipality that authorizes the absentee voting efficiency
13 option under subch. VI of ch. 6, the municipal clerk shall have the automatic
14 tabulating equipment tested, as provided under par. (a), on any day not more than
15 10 days prior to the first day on which such voting is available in the municipality
16 pursuant to s. 6.981.

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

18 5.85 (2) (a) The Except when using a report function capable of reporting
19 write-in votes by scanning the ballots and electronically capturing the write-in
20 votes, the election officials shall examine the ballots or record of votes cast for
21 write-in votes and shall count and tabulate the write-in votes. The election officials
22 shall count write-in votes as provided in s. 7.50 (2) (d). When an electronic voting
23 system is used in which ballots are distributed to electors, before separating the
24 remaining ballots from their respective covering envelopes, the election officials
25 shall examine the ballots for write-in votes. When an elector has cast a write-in

1 vote, the election officials shall compare the write-in vote with the votes on the ballot
2 to determine whether the write-in vote results in an overvote for any office. In case
3 of an overvote for any office, the election officials shall follow the procedure in par.
4 (b).

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

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

7 **6.91 Place for challenging an elector.** The vote of any voter, including an
8 absent voter, may be challenged as provided under this subchapter at the polling
9 place, at the municipal clerk's office during the period for making an in-person
10 application for an absentee ballot under s. 6.86 (1) (b), at the municipal clerk's office
11 during the period for using the voting procedure under s. 6.981, or at a central count
12 location.

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

14 6.92 (1) Except as provided in sub. (2), each the clerk or deputy clerk or an
15 inspector shall challenge for cause any person offering to vote whom the clerk, deputy
16 clerk, or inspector knows or suspects is not a qualified elector or who does not adhere
17 to any voting requirement under this chapter. If a person is challenged as
18 unqualified by the clerk or deputy clerk or an inspector, ~~one of the inspectors~~ the clerk
19 or deputy clerk or an inspector shall administer the following oath or affirmation to
20 the person: "You do solemnly swear (or affirm) that you will fully and truly answer
21 all questions put to you regarding your place of residence and qualifications as an
22 elector of this election"; and shall then ask questions which are appropriate as
23 determined by the commission, by rule, to test the person's qualifications.

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

1 **6.925 Elector making challenge in person.** Any elector may challenge for
2 cause any person offering to vote whom the elector knows or suspects is not a
3 qualified elector. If a person is challenged as unqualified by an elector, ~~one of the~~
4 ~~inspectors~~ the clerk or deputy clerk or an inspector may administer the oath or
5 affirmation to the challenged elector under s. 6.92 and ask the challenged elector the
6 questions under that section which are appropriate to test the elector's
7 qualifications. In addition, ~~one of the inspectors~~ the clerk or deputy clerk or an
8 inspector shall administer the following oath or affirmation to the challenging
9 elector: "You do solemnly swear (or affirm) that you will fully and truly answer all
10 questions put to you regarding the challenged person's place of residence and
11 qualifications as an elector of this election"; and shall then ask questions which are
12 appropriate as determined by the commission, by rule, to test the qualifications of
13 the challenged elector.

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

15 **6.94 Challenged elector oath.** If the person challenged refuses to answer
16 fully any relevant questions put to him or her by the clerk, deputy clerk, or inspector
17 under s. 6.92, the clerk, deputy clerk, or inspectors shall reject the elector's vote. If
18 the challenge is not withdrawn after the person offering to vote has answered the
19 questions, ~~one of the inspectors~~ the clerk or deputy clerk or an inspector shall
20 administer to the person the following oath or affirmation: "You do solemnly swear
21 (or affirm) that: you are 18 years of age; you are a citizen of the United States; you
22 are now and for 28 consecutive days have been a resident of this ward except under
23 s. 6.02 (2); you have not voted at this election; you have not made any bet or wager
24 or become directly or indirectly interested in any bet or wager depending upon the
25 result of this election; you are not on any other ground disqualified to vote at this

1 election". If the person challenged refuses to take the oath or affirmation, the
2 person's vote shall be rejected. If the person challenged answers fully all relevant
3 questions put to the elector by the clerk, deputy clerk, or inspector under s. 6.92,
4 takes the oath or affirmation, and fulfills the applicable registration requirements,
5 and if the answers to the questions given by the person indicate that the person meets
6 the voting qualification requirements, the person's vote shall be received.

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

8 **6.95 Voting procedure for challenged electors.** Whenever the clerk,
9 deputy clerk, or inspectors under ss. 6.92 to 6.94 receive the vote of a person offering
10 to vote who has been challenged, the clerk, deputy clerk, or inspectors shall, before
11 giving the elector a ballot, write on the back of the ballot the serial number of the
12 challenged person corresponding to the number kept at the election on the poll list,
13 or other list maintained under s. 6.79, and the notation "s. 6.95". If voting machines
14 are used in the municipality where the person is voting, the person's vote may be
15 received only upon an absentee ballot furnished by the municipal clerk which shall
16 have the corresponding serial number from the poll list or other list maintained
17 under s. 6.79 and the notation "s. 6.95" written on the back of the ballot by the
18 inspectors before the ballot is given to the elector. The clerk, deputy clerk, or
19 inspectors shall indicate on the list the reason for the challenge. The clerk, deputy
20 clerk, or inspectors shall then deposit the ballot. The challenged ballots shall be
21 counted under s. 5.85 or 7.51. The municipal board of canvassers may decide any
22 challenge when making its canvass under s. 7.53. If the returns are reported under
23 s. 7.60, a challenge may be reviewed by the county board of canvassers. If the returns
24 are reported under s. 7.70, a challenge may be reviewed by the chairperson of the
25 commission or the chairperson's designee. The decision of any board of canvassers

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

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

6 **CHAPTER 6**

7 **SUBCHAPTER VI**

8 **ABSENTEE VOTING**

9 **EFFICIENCY OPTION**

10 **6.981 Efficiency option.** (1) (a) The municipal clerk shall complete the
11 application as provided under s. 6.87 (1) and allow an elector to cast a ballot prior to
12 election day by casting a ballot into an electronic voting system as provided under
13 s. 6.80 at the municipal clerk's office, if the governing body of the municipality has
14 enacted an ordinance or adopted a resolution to allow such voting and the
15 commission has certified the municipality under s. 6.982 (8) (a) to conduct such
16 voting. An elector may vote under this subchapter during the time prescribed for an
17 application made in person pursuant to s. 6.86 (1) (b), but only after the municipality
18 has completed a successful public test of the programmed media necessary to vote
19 under this subchapter and the test occurs no more than 10 days prior to the use of
20 the media for voting under this subchapter. A municipality shall specify the
21 locations, dates, and hours for voting and the location where results will be tallied
22 on election night in the notice under s. 10.01 (2) (e). The municipal clerk, or his or
23 her designee, shall send the notice to the 2 major political parties, as defined in s.
24 13.46 (5), at the state level and, if applicable, at the county and local levels, on the
25 same date as the notice is posted for the general public.

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

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

13 **6.982 Administration. (1)** (a) Votes cast under s. 6.981 may not be tabulated
14 until the closing of the polls on election day, but the municipal clerk shall publish on
15 the municipality's Internet site a daily tally of the total number of ballots cast under
16 s. 6.981 in the municipality.

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

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

24 (d) The clerk or deputy clerk shall reconcile the ballots cast each day to ensure
25 that the number of ballots cast equals the number issued. The reconciliation may

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

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

1 witness who was present when any such activity is performed. When not in use the
2 tabulation equipment and the cast ballots sealed inside tamper-evident security
3 seal ballot bags shall be secured in a double-lock location such as a locked cabinet
4 inside a locked office.

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

16 (4) (a) An elector requesting to cast a ballot under s. 6.981 shall state aloud his
17 or her name and address. Except as provided in par. (b), the elector shall sign an
18 absentee ballot certification request log for purposes of this subchapter. The
19 municipal clerk shall have the elector provide an electronic or a handwritten
20 signature, but if the clerk allows the use of electronic signatures, the clerk shall not
21 generate a final absentee ballot log until after the last day designated for voting
22 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 at a central count location or
6 for audit, review at the polling 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 is using an electronic voting system that includes a report function capable
8 of reporting write-in votes by scanning the ballots and electronically capturing the
9 write-in votes.

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

(END)