2003 ASSEMBLY BILL 849

February 19, 2004 – Introduced by COMMITTEE ON CAMPAIGNS AND ELECTIONS. 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. 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

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.

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:

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

2   5.02 **(1e)** "Ballot" means a ballot label, sheet of paper or envelope on which

3 votes are recorded. The term also includes a sheet or card, filmstrip or other device

4 listing or containing information relative to offices, candidates and referenda which

5 is placed, projected or composed on the board or screen inside a voting machine.

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

7   5.02 **(4m)** "Electronic voting system" means a system in which votes are

8 recorded on ballots, and the votes are subsequently counted and tabulated by

9 automatic tabulating equipment. The term also includes a voting machine on which

10 votes are recorded and tabulated by electronic means.

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

12   5.02 **(24r)** "Voting machine" means a machine which serves in lieu of a voting

13 booth and which mechanically or electronically records the votes cast by electors,

14 who depress levers or buttons located next to the choices listed on a ballot to cast their

15 votes.

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

1   5.40 **(5)** A municipality which utilizes voting machines at a polling place shall

2 not utilize the machines to receive the vote of an elector who declares to the chief

3 inspector that, due to physical disability, the elector is unable to depress a ~~button or~~

4 lever on a machine.

5   SECTION 5. 5.51 (6) of the statutes is amended to read:

6   5.51 **(6)** All candidates' names for the same office shall be placed~~, projected or~~

7 ~~composed~~ on the ballot in the same size, style and color of type. The style and size

8 of type shall conform substantially to the official ballot forms prescribed by the board

9 under s. 7.08 (1) (a).

10   SECTION 6. 5.53 (1) of the statutes is amended to read:

11   5.53 **(1)** Voting machine ballots shall be placed~~, projected or composed~~ on a

12 board ~~or screen~~ inside the machine, under s. 5.64 and may be arranged in either

13 columns or rows. The type face shall be easy to read, and the type size may be no

14 smaller than 8 point.

15   SECTION 7. 5.62 (1) (a) of the statutes is amended to read:

16   5.62 **(1)** (a) At September primaries, the following ballot shall be provided for

17 the nomination of candidates of recognized political parties for national, state and

18 county offices and independent candidates for state office in each ward, in the same

19 form as prescribed by the board under s. 7.08 (1) (a), except as authorized in s. 5.655.

20 The ballots shall be made up of the several party tickets with each party entitled to

21 participate in the primary under par. (b) or sub. (2) having its own ballot, except as

22 authorized in s. 5.655. The independent candidates for state office other than district

23 attorney shall have a separate ballot for all such candidates as under s. 5.64 (1) (e),

24 except as authorized in s. 5.655. The ballots shall be secured together at the bottom.

25 The party ballot of the party receiving the most votes for president or governor at the

1   last general election shall be on top with the other parties arranged in descending

2   order based on their vote for president or governor at the last general election. The

3   ballots of parties qualifying under sub. (2) shall be placed after the parties qualifying

4   under par. (b), in the same order in which the parties filed petitions with the board.

5   Any ballot required under par. (b) 2. shall be placed next in order. The ballot listing

6   the independent candidates shall be placed at the bottom. At polling places where

7   voting machines are used, each party and the independent candidates shall be

8   represented in one or more separate columns or rows on the ballot. At polling places

9   where an electronic voting system is used ~~other than an electronic voting machine~~,

10   each party and the independent candidates may be represented in separate columns

11   or rows on the ballot.

12   SECTION 8. 5.66 (2) of the statutes is amended to read:

13   5.66 **(2)** The county clerk or board of election commissioners shall print a

14   sufficient number of sample ballots. The municipal clerk or board of election

15   commissioners shall print sample ballots whenever the municipality prepares

16   ballots under s. 7.15 (2) (b) or (c). Sample ballots shall be printed on nonwhite colored

17   paper and shall be overprinted "SAMPLE". Voting machine sample ballots shall be

18   a reduced size diagram of the face of the board ~~or screen~~ inside the voting machine

19   with all candidates, issues and voting instructions as they will appear on the official

20   ballot. Sample ballots to be used with an electronic voting system ~~in which ballots~~

21   ~~that are distributed to electors are used~~ shall be an actual size copy of the ballot. The

22   clerk or board of election commissioners printing the ballots shall distribute the

23   samples approximately as follows: 45% shall be kept in the clerk's or board's office

24   and distributed to electors requesting them; 45% shall be sent to the municipalities,

25   or, if the municipality prints ballots, 45% shall be sent to the county for distribution

1   to the electors; and 10% shall be reserved to be sent to the polling places by

2   municipalities in proportion to the number certified in sub. (1) and made available

3   to electors at the polls on election day.

4   **SECTION 9.** 5.76 of the statutes is amended to read:

5   **5.76 Adoption, experimentation or discontinuance of systems.** The

6   governing body or board of election commissioners of any municipality may by

7   ordinance or resolution adopt, experiment with, or discontinue any electronic voting

8   system authorized by this subchapter and approved under s. 5.91 for use in this state,

9   and may purchase or lease materials or equipment for such system to be used in all

10   or some of the wards within its jurisdiction, either exclusively in combination with

11   ~~mechanical~~ voting machines, or in combination with paper ballots where such ballots

12   are authorized to be used.

13   **SECTION 10.** 5.77 (1) of the statutes is renumbered 5.77 and amended to read:

14   **5.77 Applicable procedures.** So far as applicable, the procedure provided

15   for voting paper ballots applies when an electronic voting system ~~employing the use~~

16   ~~of ballots distributed to electors~~ is used.

17   **SECTION 11.** 5.77 (2) of the statutes is repealed.

18   **SECTION 12.** 5.78 of the statutes is amended to read:

19   **5.78 Voting booths.** At polling places where an electronic voting system

20   ~~employing the use of ballots distributed to electors~~ is used, the municipality shall

21   supply a sufficient number of voting booths for the use of electors as provided in s.

22   5.35 (2).

23   **SECTION 13.** 5.81 (1) and (3) of the statutes are amended to read:

24   5.81 **(1)** Whenever the statutes provide for the use of separate ballots or

25   columns or rows for offices, parties or referenda, and an electronic voting system ~~in~~

1   ~~which ballots are distributed to electors~~ is used at a polling place, a single ballot may

2   be used for all offices, referenda and parties. The ballot information, whether placed

3   on the ballot or on the voting device, shall, as far as practicable, be grouped and

4   ordered in the same manner as provided for other ballots under this chapter, except

5   that the information on the ballot need not be in separate columns or rows.

6   **(3)** If a municipality utilizes an electronic voting system ~~in which ballots~~

7   ~~distributed to electors are employed~~, absentee ballots may consist of ballots utilized

8   with the system or paper ballots and envelopes voted in person in the office of the

9   municipal clerk or voted by mail.

10   SECTION 14. 5.85 (2) and (5) of the statutes are amended to read:

11   5.85 **(2)** The election officials shall examine the ballots or record of votes cast

12   for write–in votes and shall count and tabulate the write–in votes. When an

13   electronic voting system is used ~~which utilizes a ballot which is distributed to~~

14   ~~electors~~, before separating the remaining ballots from their respective covering

15   envelopes, the election officials shall examine the ballots for write–in votes. When

16   an elector has cast a write–in vote, the election officials shall compare the write–in

17   vote with the votes on the ballot to determine whether the write–in vote results in

18   an overvote for any office. In case of an overvote for any office, the election officials

19   shall make a true duplicate ballot of all votes on the ballot except for the office which

20   is overvoted, by using an official ballot of that kind used by the elector who voted the

21   original ballot, and one of the marking devices so as to transfer all votes of the elector

22   except for the office overvoted, to an official ballot of that kind used in the ward at

23   that election. Unless election officials are selected under s. 7.30 (4) (c) without regard

24   to party affiliation, the election officials shall consist in each case of at least one

25   election official of each of the 2 major political parties, whenever officials of both

1   parties are present. Write–in votes shall be counted as provided in s. 7.50 (2) (d). The

2   original ballot upon which there is an overvote shall be clearly labeled "Overvoted

3   Ballot" and the ballot so produced "Duplicate Overvoted Ballot", and each shall bear

4   the same serial number which shall be placed thereon by the election officials,

5   commencing with number "1" and continuing consecutively for each of the ballots of

6   that kind in that ward or election district. The election officials shall initial the

7   "Duplicate Overvoted Ballot" ballots and shall place them in the container for return

8   of the ballots. The "Overvoted Ballot" ballots and their envelopes shall be placed in

9   the "Original Ballots" envelope. Ballots bearing write–in votes marked in the place

10   designated therefor and bearing the initials of an election official and not resulting

11   in an overvote and otherwise complying with the election laws as to marking shall

12   be counted, tallied, and their votes recorded on a tally sheet provided by the

13   municipal clerk. Ballots and ballot envelopes shall be separated and all ballots

14   except any which are defective or overvoted shall be placed separately in the

15   container for return of the ballots, along with the ballots marked "Duplicate

16   Overvoted Ballots".

17   **(5)** If the municipality has designated a central counting location to be used to

18   count ballots under s. 7.51 (1), the inspectors shall count and deposit the paper

19   ballots in the container. The inspectors shall then place the slip made out under sub.

20   (4) in the container. The inspectors shall also place the tally sheet recording the

21   write–in votes and other votes cast on paper ballots, and all other ballots, or the

22   record of the votes cast on an electronic voting system ~~where no ballots are~~

23   ~~distributed to electors~~, in the container and shall thereupon immediately seal the

24   container with an adhesive seal provided by the municipal clerk for the purpose in

25   such manner that the seal completely covers the opening in the container, and each

1   of the inspectors shall sign the seal. The "Defective Ballots" envelope, and "Original

2   Ballots" envelope each shall be securely sealed and the flap or end thereof of each

3   signed by the inspectors and returned to the central counting location with the box

4   for return of the ballots, enclosed ballots and returns. Thereupon, the municipal

5   clerk or 2 of the election officials shall forthwith and by the most direct route

6   transport the container and envelopes to the central counting location designated by

7   the municipal clerk. Unless election officials are selected under s. 7.30 (4) (c) without

8   regard to party affiliation, the election officials shall consist in each case of at least

9   one election official of each of the 2 major political parties, whenever officials of both

10   parties are present.

11   **SECTION 15.** 5.91 (6) of the statutes is amended to read:

12   5.91 **(6)** The voting device or machine permits an elector in a primary election

13   to vote for the candidates of the recognized political party or the independent

14   candidates of his or her choice, and the automatic tabulating equipment or machine

15   rejects any ballot on which votes are cast in the primary of more than one recognized

16   political party, except where a party or independent candidate designation is made

17   or where an elector casts write−in votes for candidates of more than one party ~~on a~~

18   ~~ballot that is distributed to the elector~~.

19   **SECTION 16.** 5.91 (7) of the statutes is amended to read:

20   5.91 **(7)** It permits an elector to vote at an election for all persons and offices

21   for whom and for which the elector is lawfully entitled to vote; to vote for as many

22   persons for an office as the elector is entitled to vote for; to vote for or against any

23   question upon which the elector is entitled to vote; and it rejects all choices recorded

24   on a ballot for an office or a measure if the number of choices exceeds the number

1   which an elector is entitled to vote for on such office or on such measure, except where

2   an elector casts excess write–in votes ~~upon a ballot that is distributed to the elector.~~

3   **Section 17.** 5.91 (9) of the statutes is amended to read:

4   5.91 **(9)** It prevents an elector from voting for the same person more than once

5   for the same office, except where an elector casts excess write–in votes ~~upon a ballot~~

6   ~~that is distributed to the elector.~~

7   **Section 18.** 5.91 (15) of the statutes is created to read:

8   5.91 **(15)** It requires the use of an individual printed ballot that is distributed

9   to the elector.

10   **Section 19.** 5.94 of the statutes is amended to read:

11   **5.94 Sample ballots; publication.** When an electronic voting system

12   ~~employing a ballot that is distributed to electors~~ is used, the county and municipal

13   clerk of the county and municipality in which the polling place designated for use of

14   the system is located shall cause to be published, in the type B notices, a true

15   actual–size copy of the ballot containing the names of offices and candidates and

16   statements of measures to be voted on, as nearly as possible, in the form in which they

17   will appear on the official ballot on election day. The notice may be published as a

18   newspaper insert. Municipal clerks may post the notice if the remainder of the type

19   B notice is posted.

20   **Section 20.** 6.82 (2) (a) and (b) of the statutes are amended to read:

21   6.82 **(2)** (a) If an elector declares to the presiding election official that he or she

22   cannot read or write, or has difficulty in reading, writing or understanding English

23   or that due to disability is unable to mark a ballot or depress a ~~button or~~ lever on a

24   voting machine, the elector shall be informed by the officials that he or she may have

25   assistance. When assistance is requested, the elector may select any individual to

1   assist in casting his or her vote. The selected individual rendering assistance may

2   not be the elector's employer or an agent of that employer or an officer or agent of a

3   labor organization which represents the elector. The selected individual shall certify

4   on the back of the ballot that it was marked with his or her assistance. Where voting

5   machines are used, certification shall be made on the registration list.

6   (b) The individual chosen shall enter the voting booth or machine with the

7   elector and shall read the names of all candidates on the ballot for each office, and

8   ask, "For which one do you vote?". The ballot shall be marked or the lever ~~or button~~

9   depressed according to the elector's expressed preference. The individual selected

10   to assist may not disclose to anyone how the elector voted.

11   SECTION 21. 6.82 (3) of the statutes is amended to read:

12   6.82 **(3)** USE OF PAPER BALLOTS. Whenever, in a municipality in which voting

13   machines are used, an elector declares to the chief inspector that, due to physical

14   disability, the elector is unable to depress a ~~button or~~ lever on a voting machine, the

15   inspectors shall permit the elector to vote using a paper ballot and voting booth.

16   SECTION 22. 7.15 (3) (a) of the statutes is amended to read:

17   7.15 **(3)** (a) Where voting machines are used or where electronic voting systems

18   are employed, the municipal clerk shall provide at least 2 duplicate sample ballots

19   for each ward in diagram form showing the board ~~or screen~~ inside each voting

20   machine or the front of each ballot as it will appear in the voting machines or booths

21   on election day.

22   SECTION 23. 7.23 (1) (f) of the statutes is amended to read:

23   7.23 **(1)** (f) Except as authorized in ~~pars. (b) and (g)~~ par. (b), ballots, applications

24   for absentee ballots, registration forms, or other records and papers requisite to

1   voting at any federal election, other than registration cards, may be destroyed after

2   22 months.

3   **SECTION 24.** 7.23 (1) (g) of the statutes is repealed.

4   **SECTION 25.** 7.37 (4) of the statutes is amended to read:

5   7.37 **(4)** BALLOTING PROCEDURE. At polling places which utilize paper ballots or

6   electronic voting systems ~~in which ballots are distributed to electors~~, 2 inspectors

7   shall be assigned to take charge of the official ballots. They shall write their initials

8   on the back of each ballot and deliver to each elector as he or she enters the voting

9   booth one ballot properly endorsed by each of them. Where paper ballots are used,

10   the inspectors shall fold each ballot in the proper manner to be deposited before

11   delivering it to the elector. If asked, inspectors may instruct any elector as to the

12   proper manner of marking the ballot, but they may not give advice, suggestions,

13   express any preferences or make any requests as to the person for whom, the

14   question on which or the ballot on which the elector shall vote.

15   **SECTION 26.** 7.51 (6) of the statutes is amended to read:

16   7.51 **(6)** ELECTRONIC VOTING SYSTEMS. The procedure for canvassing of votes cast

17   at polling places utilizing an electronic voting system ~~in which ballots are distributed~~

18   ~~to electors~~ shall follow the procedure for canvassing paper ballots insofar as

19   applicable~~, and the procedure for canvassing of votes cast at polling places utilizing~~

20   ~~an electronic voting machine shall follow the procedure for canvassing of mechanical~~

21   ~~voting machines insofar as applicable~~, except as otherwise provided in ss. 5.85 to

22   5.89.

23   **SECTION 27.** 9.01 (1) (b) 6., 8. and 10. of the statutes are amended to read:

24   9.01 **(1)** (b) 6. In recounting the votes cast on a voting machine in which the

25   record of the votes cast is contained in the machine, the board of canvassers shall

1   make a record of the number of the seal, if any, the number of the protective counter

2   or other device, if one is provided, and shall open the recording compartment of the

3   machine, and without unlocking the machine against voting, shall recount the votes

4   thereon. ~~If the machine is an electronic voting machine utilizing a detachable record~~

5   ~~of votes cast, the record shall be retabulated under s. 5.90.~~

6   8. If upon the recount it is found that the original canvass of the returns has

7   been correctly made from a voting machine and that a discrepancy still remains

8   unaccounted for, the board of canvassers shall publicly unlock the voting and

9   counting mechanism of the machine, and shall proceed to examine and test the

10   machine to determine the cause of the discrepancy in returns from the machine. ~~A~~

11   ~~similar test shall be performed for electronic voting machines to ascertain whether~~

12   ~~there is any malfunction in the machine.~~ After the completion of the examination

13   and test, the board of canvassers shall prepare a statement giving the results of the

14   examination and test. The statement shall be witnessed by at least one witness.

15   10. Recounts at polling places utilizing an electronic voting system ~~in which~~

16   ~~ballots are distributed to electors~~ shall be performed in accordance with the

17   procedure for recounting paper ballots insofar as applicable, except as provided in

18   s. 5.90. ~~Recounts at polling places utilizing electronic voting machines shall be~~

19   ~~performed in accordance with the procedure for recounting votes cast on mechanical~~

20   ~~voting machines, insofar as applicable, except as provided in s. 5.90.~~

21   SECTION 28. 10.01 (2) (b) of the statutes is amended to read:

22   10.01 **(2)** (b) Type B—The type B notice shall include the relevant facsimile

23   ballots and the relevant portions of voting instructions to electors under s. 10.02 for

24   each office or referendum and shall specify the date of the election. In counties or

25   municipalities where an electronic voting system ~~in which ballots are distributed to~~

1   electors is used, the notice shall include the information specified in s. 5.94. The type

2   B notice shall be published once by the county clerks, and for primaries and other

3   elections in municipalities or special purpose districts, once by the clerk of the

4   municipality or special purpose district on the day preceding each primary and other

5   election.

6   **SECTION 29.** 10.02 (3) (b) 1., 2., 2m., 3. and 4. of the statutes are amended to

7   read:

8   10.02 **(3)** (b) 1. If an elector wishes to vote for all candidates nominated by any

9   party, the elector shall make a cross (✗) or depress the lever or button next to the

10   party designation shown at the top of the ballot. Unless a name has been erased or

11   crossed out, another name written in, a cross made next to the name of a candidate

12   for the same office in another column or a sticker applied, a cross next to a party

13   designation at the top of the column is a vote for all the party's candidates listed in

14   the column. If an elector does not wish to vote for all the candidates nominated by

15   one party, the elector shall make a cross (✗) next to or separately depress the levers

16   or buttons next to each candidate's name for whom he or she intends to vote, or shall

17   insert or write in the name of a candidate.

18   2. At a special partisan primary, the elector shall select the party ballot of his

19   or her choice and shall make a cross (✗) next to or depress the lever or button next

20   to the candidate's name for each office for whom the elector intends to vote, or shall

21   insert or write in the name of the elector's choice for a candidate.

22   2m. At the September primary, the elector shall select the party ballot of his

23   or her choice or the ballot containing the names of the independent candidates for

24   state office, and make a cross (✗) next to or depress the lever or button next to the

25   candidate's name for each office for whom the elector intends to vote or insert or write

1   in the name of the elector's choice for a party candidate, if any. In order to qualify

2   for participation in the Wisconsin election campaign fund, a candidate for state office

3   at the September primary, other than a candidate for district attorney, must receive

4   at least 6% of all votes cast on all ballots for the office for which he or she is a

5   candidate, in addition to other requirements.

6   3. When casting a presidential preference vote, the elector shall select the party

7   ballot of his or her choice and make a cross (✗) next to or depress the ~~button or~~ lever

8   next to the candidate's name for whom he or she intends to vote or shall, in the

9   alternative, make a cross (✗) next to or depress the ~~button or~~ lever next to the words

10   "Uninstructed delegation", or shall write in the name of his or her choice for a

11   candidate.

12   4. At a nonpartisan primary, the elector shall make a cross (✗) next to or

13   depress the ~~button or~~ lever next to the candidate's name for each office for whom he

14   or she intends to vote, or insert or write in the name of his or her choice for a

15   candidate.

16   SECTION 30. 10.02 (3) (c) and (d) of the statutes are amended to read:

17   10.02 **(3)** (c) In presidential elections, unless the elector wishes to vote for all

18   candidates nominated by any party, the elector shall make a cross (✗) next to or

19   depress the ~~button or~~ lever next to the set of candidates for president and vice

20   president for whom he or she intends to vote. A vote for candidates for president and

21   vice president is a vote for the presidential electors of those candidates.

22   (d) On referenda questions, the elector shall make a cross (✗) next to or depress

23   the ~~button or~~ lever next to the answer which he or she intends to give.

24   SECTION 31. 10.06 (3) (e) of the statutes is amended to read:

1   10.06 **(3)** (e) When ~~electronic or mechanical~~ voting machines or electronic

2   voting systems ~~in which ballots are distributed to electors~~ are used in a municipality

3   at a municipal election, the municipal clerk shall publish a type B notice on the

4   Monday before the election. The notice shall include all offices and questions to be

5   voted on at the election. The cost of this notice shall be shared under s. 5.68 (2) and

6   (3).

7   **SECTION 32.** 12.13 (3) (j) of the statutes is amended to read:

8   12.13 **(3)** (j) When called upon to assist an elector who cannot read or write, has

9   difficulty in reading, writing or understanding English, or is unable to mark a ballot

10   or depress a lever ~~or button~~ on a voting machine, inform the elector that a ballot

11   contains names or words different than are printed or displayed on the ballot with

12   the intent of inducing the elector to vote contrary to his or her inclination,

13   intentionally fail to cast a vote in accordance with the elector's instructions or reveal

14   the elector's vote to any 3rd person.

15   **(END)**