



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBs0596/1  
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**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 377**

February 28, 2006 – Offered by Senator LEIBHAM.

1 **AN ACT** *to renumber and amend* 6.22 (4); *to amend* 6.22 (5), 6.87 (6) and 9.01  
2 (1) (b) (intro.); and *to create* 6.22 (5m) of the statutes; **relating to:** absentee  
3 balloting by military electors.

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***Analysis by the Legislative Reference Bureau***

Under current law, absentee ballots must be returned to the municipal clerk in time for delivery to the polls before the polls close. Any ballot not delivered by this deadline may not be counted.

This substitute amendment provides that a vote cast on a ballot cast by a “military elector”, as defined by law, that is received by the municipal clerk after the close of the polls may, in some situations, still be counted. Under the substitute amendment, a vote cast on a ballot that is received after the polls close is considered a valid ballot if it is received by the municipal clerk or board of election commissioners by the deadline for requesting a recount for the office for which the vote is cast and if it contains a postal service cancellation mark dated on or before the election day for which the ballot was cast. However, under the substitute amendment these ballots will not be counted unless a recount occurs.

Under the substitute amendment, a certificate envelope sent to a military elector must be clearly labeled so that when it is returned the municipal clerk or board of election commissioners will know that it is from a military elector. If a certificate envelope that is returned by a military elector after the polls close but

before the deadline for the return of such ballots has an illegible postmark, or no postmark, it is presumed that the envelope was timely mailed, unless established otherwise.

The substitute amendment directs the municipal clerk to post in his or her office on election night and on an internet site a statement announcing the number of absentee ballots that have not been returned by military electors by the closing of the polls. However, the posting may not include the names or addresses of any military electors.

Under the substitute amendment, if a recount petition is filed, the municipal clerk or board of election commissioners must immediately notify the appropriate board of canvassers as to the number of absentee ballots that were timely received after the polls closed and whether any absentee ballots that were sent to military electors have not been returned. If there are unreturned ballots at the time a recount petition has been filed, the substitute amendment provides that the recount may not proceed until all timely returned ballots are delivered by the clerk or 9 a.m. on the day following the last day for filing a recount petition, whichever occurs first. As soon as practicable after receiving the last late-arriving ballot but in no case later than 9 a.m. on the day following the last day for filing a recount petition, the municipal clerk or board of election commissioners must transmit to the appropriate board of canvassers all of the late-arriving ballots of military electors received by the clerk or board.

This substitute amendment provides that when the board of canvassers conducting a recount receives late-arriving absentee ballots cast by military electors, the board must first open and record the names of the military electors whose ballots have been received. If the late-arriving ballot cast by a military elector is otherwise valid, the board of canvassers must count the ballot and adjust the original statements, certifications, and determinations. After doing so, the board of canvassers may begin the recount.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 6.22 (4) of the statutes is renumbered 6.22 (4) (a) and amended to  
2 read:

3           6.22 (4) (a) An individual who qualifies as a military elector may request an  
4 absentee ballot for any election, or for all elections until the individual otherwise  
5 requests or until the individual no longer qualifies as a military elector.

1           **(b)** A military elector’s application may be received at any time. The municipal  
2 clerk shall not send a ballot for an election if the application is received later than  
3 5 p.m. on the Friday preceding that election unless s. 6.87 (3) (d) applies. The  
4 municipal clerk shall send a ballot, as soon as available, to each military elector who  
5 requests a ballot.

6           **(d)** The board shall prescribe the instructions for marking and returning ballots  
7 and the municipal clerk shall enclose instructions with each ballot and shall also  
8 enclose supplemental instructions for local elections. The envelope, return envelope  
9 and instructions may not contain the name of any candidate appearing on the  
10 enclosed ballots other than that of the municipal clerk affixed in the fulfillment of  
11 his or her duties. Each certificate envelope that is mailed or transmitted to a military  
12 elector under this section shall be clearly labeled as “Cast by a military elector under  
13 s. 6.22, Wis. stats., and may be eligible to be counted after election day”.

14           **(e)** Whenever the material is mailed, the material shall be prepared and mailed  
15 to make use of the federal free postage laws. The mailing list established under this  
16 subsection shall be kept current in the same manner as provided in s. 6.86 (2) (b).

17           **SECTION 2.** 6.22 (5) of the statutes is amended to read:

18           **6.22 (5) VOTING PROCEDURE.** Except as authorized in sub. (5m) and s. 6.25, the  
19 ballot shall be marked and returned, deposited and recorded in the same manner as  
20 other absentee ballots. In addition, the certification under s. 6.87 (2) shall have a  
21 statement of the elector’s birth date. Failure to return any unused ballots in a  
22 primary election does not invalidate the ballot on which the elector casts his or her  
23 votes.

24           **SECTION 3.** 6.22 (5m) of the statutes is created to read:

1           **6.22 (5m) TREATMENT OF BALLOTS RECEIVED AFTER CLOSE OF POLLS.** (a) A vote cast  
2 on a ballot cast under this section that is received by the municipal clerk after the  
3 close of the polls but before the deadline for filing a petition for a recount under s. 9.01  
4 (1) (a) for the office for which the vote is cast shall be treated as valid if the envelope  
5 in which the ballot was received bears a postal service cancellation mark dated on  
6 or before the election day for which the ballot was cast, but may only be counted for  
7 purposes of a recount under s. 9.01.

8           (b) For purposes of par. (a), if a certificate envelope is not postmarked or has  
9 a postmark that is not legible to the municipal clerk, board of canvassers, or the board  
10 of absentee ballot canvassers in municipalities where absentee ballots are canvassed  
11 under s. 7.52, and the envelope was received by mail from the U.S. postal service, it  
12 is presumed that the envelope was placed in the mail on or before election day, unless  
13 established by a preponderance of the evidence to the contrary.

14           (c) No later than the closing hour of the polls, the municipal clerk of each  
15 municipality shall post at his or her office, at any alternate site under s. 6.855, and  
16 on the Internet at a site announced by the clerk before the polls open, and shall make  
17 available to any person upon request, a statement of the number of absentee ballots  
18 that the clerk has mailed or transmitted to military electors under this section and  
19 that have not been returned by the closing hour on election day. The posting shall  
20 not include the names or addresses of any military electors.

21           (d) All ballots received by the municipal clerk under this subsection by the  
22 deadline specified in par. (a) shall be carefully preserved by the municipal clerk until  
23 destruction or other disposition is authorized under s. 7.23. If a petition for a recount  
24 is filed under s. 9.01, the clerk shall immediately notify the appropriate board of  
25 canvassers as to whether any absentee ballots that have been mailed or transmitted

1 to military electors under this section have been received after the closing of the polls  
2 or have not been returned.

3 (dm) If the clerk notifies the board of canvassers that any ballots that have been  
4 mailed or transmitted to military electors under this section have not been returned,  
5 the board of canvassers shall not proceed with the recount until all such ballots have  
6 been returned to the clerk and transmitted to the board of canvassers, or 9 a.m. on  
7 the day following the last day for filing of a petition for the recount, whichever occurs  
8 first.

9 (e) The clerk shall transmit to the appropriate board of canvassers all ballots  
10 received under par. (a) by the clerk as soon as practicable after receiving the last  
11 ballot but in no case later than 9 a.m. on the day following the last day for filing a  
12 petition for the recount under s. 9.01.

13 (f) Whenever a board of canvassers conducting a recount receives absentee  
14 ballots cast by military electors as provided in par. (e), the board of canvassers shall  
15 first proceed to open and record the names of the military electors whose ballots have  
16 been received. If the ballot cast by a military elector is otherwise valid, the board of  
17 canvassers shall count the vote cast on the ballot for the office being recounted and  
18 shall adjust the original statements, certifications, and determinations accordingly.

19 (g) The board of canvassers shall then proceed with the recount under s. 9.01  
20 (1) (b).

21 **SECTION 4.** 6.87 (6) of the statutes is amended to read:

22 6.87 (6) The Except as provided in s. 6.22 (5m), the ballot shall be returned so  
23 it is received by the municipal clerk in time for delivery to the polls before the closing  
24 hour. Any Except as provided in s. 6.22 (5m), any ballot not mailed or delivered as  
25 provided in this subsection may not be counted.

