



2013 ASSEMBLY BILL 24

February 15, 2013 – Introduced by Representatives THIESFELDT, BERNIER, LEMAHIEU, RIPP, SINICKI, PETRYK, KLEEFISCH, T. LARSON, KNODL, BERCEAU, SCHRAA, KAHL and MARKLEIN, cosponsored by Senators GUDEx, PETROWSKI and GROTHMAN. Referred to Committee on Campaigns and Elections.

1 **AN ACT** *to amend* 5.90 (1) of the statutes; **relating to:** the method of recounting
2 votes cast with automatic tabulating equipment.

Analysis by the Legislative Reference Bureau

Currently, with a limited exception, a board of canvassers must use automatic tabulating equipment to conduct a recount of ballots that are in machine-readable form. However, a candidate, or an elector if the recount is for a referendum question, may petition the circuit court for an order requiring ballots in machine-readable form to be recounted by hand or by another method approved by the court. To obtain such an order, the candidate or elector must show by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect results and there is a substantial probability that recounting the ballots by hand or by another method will produce a more correct result and change the outcome of the election.

This bill permits the board of canvassers conducting a recount to determine to conduct the recount of a specific election by hand unless a court orders the recount to be conducted by another method.

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

3 **SECTION 1.** 5.90 (1) of the statutes is amended to read:

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SECTION 1

1 5.90 (1) Except as otherwise provided in this subchapter, recounts of votes cast
2 on an electronic voting system shall be conducted in the manner prescribed in s. 9.01.
3 Except as provided in this subsection, sub. (2), and s. 9.01 (1) (b) 8s., if the ballots are
4 distributed to the electors, the board of canvassers shall recount the ballots with
5 automatic tabulating equipment. The board of canvassers shall test the automatic
6 tabulating equipment to be used prior to the recount as provided in s. 5.84, and then
7 the official ballots or the record of the votes cast shall be recounted on the automatic
8 tabulating equipment. In addition, the board of canvassers shall check the ballots
9 for the presence or absence of the initials and other distinguishing marks, shall
10 examine the ballots marked “Rejected”, “Defective” and “Objected to” to determine
11 the propriety of such labels, and shall compare the “Duplicate Overvoted Ballots”
12 and “Duplicate Damaged Ballots” with their respective originals to determine the
13 correctness of the duplicates. Unless a court orders a recount to be conducted by
14 another method under sub. (2), the board of canvassers may determine to conduct the
15 recount of a specific election by hand. If electronic voting machines are used, the
16 board of canvassers shall perform the recount using the permanent paper record of
17 the votes cast by each elector, as generated by the machines.

18 **SECTION 2. Initial applicability.**

19 (1) This act first applies with respect to petitions for recounts at elections held
20 after the effective date of this subsection.

21 (END)