ENGROSSED 2017 ASSEMBLY BILL 637

March 13, 2018 – Printed by direction of Senate Chief Clerk.

AN ACT to repeal 6.15 (6) and 6.21; to renumber and amend 5.84 (1); to amend 5.85 (2) (a), 6.84 (2), 6.88 (3) (b), 6.92 (1), 6.925, 6.94, 6.95 and 7.52 (3) (b); and to create 5.84 (1) (b), 6.91 and subchapter VI of chapter 6 [precedes 6.981] of the statutes; relating to: using an electronic voting machine to cast a vote with an in-person absentee ballot and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

Engrossment information:
The text of Engrossed 2017 Assembly Bill 637 consists of the following documents adopted in the assembly on February 20, 2018: Assembly Substitute Amendment 3 as affected by Assembly Amendments 2, 9, 11, and 12. The text also includes the March 13, 2018, chief clerk’s correction to Assembly Amendment 12 to Assembly Substitute Amendment 3 to Assembly Bill 637.

Content of Engrossed 2017 Assembly Bill 637:
This bill 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 bill 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 bill, 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 bill.

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 bill 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 bill 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:

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

5.84 (1) (a) Where Except as provided in par. (b), where any municipality employs an electronic voting system which utilizes automatic tabulating equipment, either at the polling place or at a central counting location, the municipal clerk shall, on any day not more than 10 days prior to the election day on which the equipment is to be utilized, have the equipment tested to ascertain that it will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given by the clerk at least 48 hours prior to the test by publication
of a class 1 notice under ch. 985 in one or more newspapers published within the
municipality if a newspaper is published therein, otherwise in a newspaper of
general circulation therein. The test shall be open to the public. The test shall be
conducted by processing a preaudited group of ballots so marked as to record a
predetermined number of valid votes for each candidate and on each referendum.
The test shall include for each office one or more ballots which have votes in excess
of the number allowed by law and, for a partisan primary election, one or more ballots
which have votes cast for candidates of more than one recognized political party, in
order to test the ability of the automatic tabulating equipment to reject such votes.
If any error is detected, the municipal clerk shall ascertain the cause and correct the
error. The clerk shall make an errorless count before the automatic tabulating
equipment is approved by the clerk for use in the election.

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

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

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

5.85 (2) (a) The Except when using a report function capable of reporting
write-in votes by scanning the ballots and electronically capturing the write-in
votes, the election officials shall examine the ballots or record of votes cast for
write-in votes and shall count and tabulate the write-in votes. The election officials
shall count write-in votes as provided in s. 7.50 (2) (d). When an electronic voting
system is used in which ballots are distributed to electors, before separating the
remaining ballots from their respective covering envelopes, the election officials shall examine the ballots for write-in votes. When an elector has cast a write-in vote, the election officials shall compare the write-in vote with the votes on the ballot to determine whether the write-in vote results in an overvote for any office. In case of an overvote for any office, the election officials shall follow the procedure in par. (b).

**SECTION 3m.** 6.15 (6) of the statutes is repealed.

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

**SECTION 4m.** 6.84 (2) of the statutes is amended to read:

> 6.84 (2) **INTERPRETATION.** Notwithstanding s. 5.01 (1), with respect to matters relating to the absentee ballot process, ss. 6.86, 6.87 (3) to (7) and 9.01 (1) (b) 2. and 4. and subch. VI shall be construed as mandatory. Ballots cast in contravention of the procedures specified in those provisions may not be counted. Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election.

**SECTION 4r.** 6.88 (3) (b) of the statutes is amended to read:

> 6.88 (3) (b) **When the inspectors find that a certification is insufficient, that the applicant is not a qualified elector in the ward or election district, that the ballot envelope is open or has been opened and resealed, that the ballot envelope contains more than one ballot of any one kind or, except in municipalities where absentee ballots are canvassed under s. 7.52, that the certificate of a military or overseas elector who received an absentee ballot by facsimile transmission or electronic mail is missing, or if proof is submitted to the inspectors that an elector voting an absentee ballot has since died, the inspectors shall not count the ballot. The inspectors shall endorse every ballot not counted on the back, “rejected (giving the reason)”.” The
inspectors shall reinsert each rejected ballot into the certificate envelope in which it was delivered and enclose the certificate envelopes and ballots, and securely seal the ballots and envelopes in an envelope marked for rejected absentee ballots. The inspectors shall endorse the envelope, “rejected ballots” with a statement of the ward or election district and date of the election, signed by the chief inspector and one of the inspectors representing each of the 2 major political parties and returned to the municipal clerk in the same manner as official ballots voted at the election.

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

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

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

6.92 (1) Except as provided in sub. (2), each the clerk or deputy clerk or an inspector shall challenge for cause any person offering to vote whom the clerk, deputy clerk, or inspector knows or suspects is not a qualified elector or who does not adhere to any voting requirement under this chapter. If a person is challenged as unqualified by the clerk or deputy clerk or an inspector, one of the inspectors the clerk or deputy clerk or an inspector shall administer the following oath or affirmation to the person: “You do solemnly swear (or affirm) that you will fully and truly answer all questions put to you regarding your place of residence and qualifications as an elector of this election”; and shall then ask questions which are appropriate as determined by the commission, by rule, to test the person’s qualifications.
SECTION 7. 6.925 of the statutes is amended to read:

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

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

6.94 Challenged elector oath. If the person challenged refuses to answer fully any relevant questions put to him or her by the clerk, deputy clerk, or inspector under s. 6.92, the clerk, deputy clerk, or inspectors shall reject the elector’s vote. If the challenge is not withdrawn after the person offering to vote has answered the questions, one of the inspectors the clerk or deputy clerk or an inspector shall administer to the person the following oath or affirmation: “You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 28 consecutive days have been a resident of this ward except under s. 6.02 (2); you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the
result of this election; you are not on any other ground disqualified to vote at this
election”. If the person challenged refuses to take the oath or affirmation, the
person’s vote shall be rejected. If the person challenged answers fully all relevant
questions put to the elector by the clerk, deputy clerk, or inspector under s. 6.92,
takes the oath or affirmation, and fulfills the applicable registration requirements,
and if the answers to the questions given by the person indicate that the person meets
the voting qualification requirements, the person’s vote shall be received.

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

6.95 Voting procedure for challenged electors. Whenever the clerk,
deputy clerk, or inspectors under ss. 6.92 to 6.94 receive the vote of a person offering
to vote who has been challenged, the clerk, deputy clerk, or inspectors shall, before
giving the elector a ballot, write on the back of the ballot the serial number of the
challenged person corresponding to the number kept at the election on the poll list,
or other list maintained under s. 6.79, and the notation “s. 6.95”. If voting machines
are used in the municipality where the person is voting, the person’s vote may be
received only upon an absentee ballot furnished by the municipal clerk which shall
have the corresponding serial number from the poll list or other list maintained
under s. 6.79 and the notation “s. 6.95” written on the back of the ballot by the
inspectors before the ballot is given to the elector. The clerk, deputy clerk, or
inspectors shall indicate on the list the reason for the challenge. The clerk, deputy
clerk, or inspectors shall then deposit the ballot. The challenged ballots shall be
counted under s. 5.85 or 7.51. The municipal board of canvassers may decide any
challenge when making its canvass under s. 7.53. If the returns are reported under
s. 7.60, a challenge may be reviewed by the county board of canvassers. If the returns
are reported under s. 7.70, a challenge may be reviewed by the chairperson of the
commission or the chairperson’s designee. The decision of any board of canvassers or of the chairperson or chairperson’s designee may be appealed under s. 9.01. The standard for disqualification specified in s. 6.325 shall be used to determine the validity of challenged ballots.

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

**CHAPTER 6**

**SUBCHAPTER VI**

**ABSENTEE VOTING**

**EFFICIENCY OPTION**

**6.981 Efficiency option.** (1) (a) The municipal clerk shall complete the application as provided under s. 6.87 (1) and allow an elector to cast a ballot prior to election day by casting a ballot into an electronic voting system as provided under s. 6.80 at the municipal clerk’s office, if the governing body of the municipality has enacted an ordinance or adopted a resolution to allow such voting and the commission has certified the municipality under s. 6.982 (8) (a) to conduct such voting. An elector may vote under this subchapter during the time prescribed for an application made in person pursuant to s. 6.86 (1) (b), but only after the municipality has completed a successful public test of the programmed media necessary to vote under this subchapter and the test occurs no more than 10 days prior to the use of the media for voting under this subchapter. A municipality shall specify the locations, dates, and hours for voting and the location where results will be tallied on election night in the notice under s. 10.01 (2) (e). The municipal clerk, or his or her designee, shall send the notice to the 2 major political parties, as defined in s.
(b) After the governing body of the municipality has enacted an ordinance or adopted a resolution to allow the voting procedure under par. (a), the municipality shall use that procedure for all subsequent elections until such time that the governing body enacts an ordinance or adopts a resolution repealing the use of the procedure. The municipal clerk or deputy municipal clerk shall supervise the voting procedure under par. (a).

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

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

(b) No person may act 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 under s. 6.981 before the close of the polls on election day. A person who violates this paragraph is guilty of a Class I felony.

(c) An elector who casts a ballot under s. 6.981 that is accepted by automatic tabulating equipment may not request that the ballot be returned to him or her as defective in order to cast a new ballot, as provided under s. 6.80 (2) (c).
(d) The clerk or deputy clerk shall reconcile the ballots cast each day to ensure that the number of ballots cast equals the number issued. The reconciliation may include performing checks that do not involve examining the ballots cast, including checking data entry and verifying mathematical computations. If the clerk or deputy clerk is unable to reconcile the ballots, the incident log shall include the date and any other information necessary to clearly identify the reconciliation issue. The municipality shall post the daily reconciliation incident report on the municipality's Internet site at the close of each day during the period for voting under this subchapter. If the clerk or deputy clerk is unable to reconcile the ballots, the clerk or deputy clerk shall deliver all ballot bags of unreconciled ballots, along with the daily reconciliation incident reports, to the appropriate board of canvassers as provided under s. 7.53 and the board of canvassers shall complete the reconciliation using the methods provided under s. 7.51.

(2) At all times when the process for voting under this subchapter is in use the municipality shall have at least 2 individuals present, not including an elector. The tabulation equipment shall be in a location that is visible to the clerk or the clerk's designee and to at least one other person. Automatic tabulating equipment used for purposes of this subchapter shall be secured with a tamper-evident security seal and the clerk or the clerk's designee, in the presence of at least one witness, shall check the seals for tampering at the beginning and ending of each day designated for voting under s. 6.981. The areas where the programmed media and the ballots cast are housed shall be secured with tamper-evident security seals. At least 2 persons shall be present for any administrative process that requires access to a sealed area and the breaking of a tamper-evident security seal, including clearing a jammed ballot or emptying a full ballot bin. The clerk or clerk's designee shall daily document all
checks and record any such activity and reason in which a seal is broken and replaced under this subsection. The clerk or clerk’s designee shall obtain the signature of any witness who was present when any such activity is performed. When not in use the tabulation equipment and the cast ballots sealed inside tamper-evident security seal ballot bags shall be secured in a double-lock location such as a locked cabinet inside a locked office.

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

(4) (a) An elector requesting to cast a ballot under s. 6.981 shall state aloud his or her name and address. Except as provided in par. (b), the elector shall sign an absentee ballot certification request log for purposes of this subchapter. The municipal clerk shall have the elector provide an electronic or a handwritten signature, but if the clerk allows the use of electronic signatures, the clerk shall not generate a final absentee ballot log until after the last day designated for voting under s. 6.981.
(b) The municipal clerk may have an elector sign an electronic poll book using an electronic signature as an alternative to signing an absentee ballot certification request log under par. (a).

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

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

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

(8) (a) The commission shall establish procedures for certifying municipalities to conduct voting under s. 6.981. The governing body of a municipality wishing to obtain certification under this paragraph shall send a plan for administering the process under this subchapter to the commission for review no later than 60 days prior to the first day on which the municipality would conduct voting under s. 6.981.
The commission shall review the plan and give notice of approval or of changes needed to receive approval no later than 20 days after receiving the plan. The commission may send notice to the municipality by electronic mail. The commission shall certify a municipality to conduct voting under s. 6.981 if it determines that the municipality satisfies all of the following:

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

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

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

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

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

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

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

Section 10m. 7.52 (3) (b) of the statutes is amended to read:
7.52 (3) (b) When the board of absentee ballot canvassers finds that a certification is insufficient, that the applicant is not a qualified elector in the ward or election district, that the ballot envelope is open or has been opened and resealed, that the ballot envelope contains more than one ballot of any one kind, or that the certificate of a military or overseas elector who received an absentee ballot by facsimile transmission or electronic mail is missing, or if proof is submitted to the board of absentee ballot canvassers that an elector voting an absentee ballot has since died, the board of absentee ballot canvassers shall not count the ballot. Each member of the board of absentee ballot canvassers shall endorse every ballot not counted on the back as “rejected (giving the reason).” The board of absentee ballot canvassers shall reinsert each rejected ballot into the certificate envelope in which it was delivered and enclose the certificate envelopes and ballots, and securely seal the ballots and envelopes in an envelope marked for rejected absentee ballots. The board of absentee ballot canvassers shall endorse the envelope as “rejected ballots,” with a statement of the ward or election district and date of the election, and each member of the board of absentee ballot canvassers shall sign the statement. The board of absentee ballot canvassers shall then return the envelope containing the ballots to the municipal clerk.

(END)