



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBs0284/3  
JTK:kjf:jf

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2005 ASSEMBLY BILL 627**

November 3, 2005 - Offered by COMMITTEE ON CAMPAIGNS AND ELECTIONS.

1     **AN ACT to amend** 5.84 (title), 5.90 and 5.91 (18); and **to create** 5.905 of the  
2             statutes; **relating to:** the size of type for text printed or displayed on ballots,  
3             electronic voting system standards, recount procedures, and software  
4             components, and granting rule-making authority.

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

Currently, the form of ballots at elections is prescribed by the Elections Board in accordance with statutory requirements. The type size for text that is printed or displayed on the ballots may be no smaller than 8 point. This is 8-point type. This substitute amendment provides that the type size for all text that is printed or displayed on ballots at elections may be no smaller than 18 point. **This is 18-point type.**

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. The system must enable an elector to privately verify the votes selected by the elector

before casting his or her ballot. All electronic voting systems must be tested publicly 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, and the machines must produce a permanent paper of record of the vote cast by each elector at the time that it is cast that enables a manual count or recount of the elector's vote. Currently, there is no requirement pertaining to accessibility or independent verification of software that is used to operate a system or to record and tally the votes cast.

This substitute amendment provides that if a municipality uses an electronic voting system that consists of a voting machine, the machine must generate a complete paper ballot in conformity with the format for paper ballots prescribed by law, including the type-size requirement, that shows all votes cast by each elector, that is visually verifiable by the elector before the elector leaves the machine, and that enables a manual count or recount of each vote cast by the elector.

Currently, recounts of elections held at polling places utilizing electronic voting machines are performed in accordance with the procedures for recounting votes cast on mechanical voting machines, except as otherwise provided. This substitute amendment provides that if an electronic voting machine is used at a polling place, the board of canvassers must perform the recount using the paper ballots showing the votes cast by each elector, as generated by the machines.

The substitute amendment also directs the Elections Board to promulgate rules to ensure the security, review, and verification of software components used with each electronic voting system approved by the board for use at elections in this state. Under the substitute amendment, the board must require each vendor of an electronic voting system to place its software components in escrow with the board. The substitute amendment prohibits the board from providing access to the components to any person except in a recount of an election. If a valid petition for a recount is filed in an election in which an electronic voting system is used to record and tally the votes cast, the board must provide access to the software components used to record and tally the votes to one or more persons designated by each party to the recount if each designee first enters into an agreement with the board under which the designee agrees to maintain the confidentiality of all proprietary information provided to the designee. The substitute amendment permits a county or municipality to contract with the vendor of an electronic voting system to permit a greater degree of access to software components used with the system than is otherwise authorized under the substitute amendment.

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

1           **SECTION 1.** 5.51 (1) of the statutes is amended to read:

1           5.51 (1) The type face used on all paper ballots shall be easy to read, and the  
2 type size may be no smaller than ~~8~~ 18 point.

3           **SECTION 2.** 5.51 (6) of the statutes is amended to read:

4           5.51 (6) All candidates' names for the same office shall be placed, projected or  
5 composed on the ballot in the same size, style and color of type. The style ~~and size~~  
6 of type shall conform substantially to the official ballot forms prescribed by the board  
7 under s. 7.08 (1) (a).

8           **SECTION 3.** 5.84 (title) of the statutes is amended to read:

9           **5.84 (title) Testing of equipment; ~~custody of~~ requirements for programs**  
10 **and ballots.**

11           **SECTION 4.** 5.90 of the statutes is amended to read:

12           **5.90 Recounts.** Except as otherwise provided in this subchapter, recounts of  
13 votes cast on an electronic voting system shall be conducted in the manner prescribed  
14 in s. 9.01. If the ballots are ~~in readable form~~ distributed to the electors, the board  
15 of canvassers may elect to recount the ballots without the aid of automatic tabulating  
16 equipment. If the board of canvassers elects to use automatic tabulating equipment,  
17 the board of canvassers shall test the automatic tabulating equipment to be used  
18 prior to the recount as provided in s. 5.84, and then the official ballots or the record  
19 of the votes cast shall be recounted on the automatic tabulating equipment. In  
20 addition, the board of canvassers shall check the ballots for the presence or absence  
21 of the initials and other distinguishing marks, shall examine the ballots marked  
22 "Rejected", "Defective" and "Objected to" to determine the propriety of such labels,  
23 and shall compare the "Duplicate Overvoted Ballots" and "Duplicate Damaged  
24 Ballots" with their respective originals to determine the correctness of the  
25 duplicates. If electronic voting machines are used, the board of canvassers shall

1 perform the recount using the paper ballots showing the votes cast by each elector,  
2 as generated by the machines.

3 SECTION 5. 5.905 of the statutes is created to read:

4 **5.905 Software components. (1)** In this section, “software component”  
5 includes vote-counting source code, table structures, modules, program narratives  
6 and other human-readable computer instructions used to count votes with an  
7 electronic voting system.

8 (2) The board shall determine which software components of an electronic  
9 voting system it considers to be necessary to enable review and verification of the  
10 accuracy of the automatic tabulating equipment used to record and tally the votes  
11 cast with the system. The board shall require each vendor of an electronic voting  
12 system that is approved under s. 5.91 to place those software components in escrow  
13 with the board within 90 days of the date of approval of the system and within 10 days  
14 of the date of any subsequent change in the components. The board shall secure and  
15 maintain those software components in strict confidence except as authorized in this  
16 section. Unless authorized under this section, the board shall withhold access to  
17 those software components from any person who requests access under s. 19.35 (1).

18 (3) The board shall promulgate rules to ensure the security, review and  
19 verification of software components used with each electronic voting system  
20 approved by the board. The verification procedure shall include a determination that  
21 the software components correspond to the instructions actually used by the system  
22 to count votes.

23 (4) If a valid petition for a recount is filed under s. 9.01 in an election at which  
24 an electronic voting system was used to record and tally the votes cast, each party  
25 to the recount may designate one or more persons who are authorized to receive

1 access to the software components that were used to record and tally the votes in the  
2 election. The board shall grant access to the software components to each designated  
3 person if, before receiving access, the person enters into a written agreement with  
4 the board that obligates the person to exercise the highest degree of reasonable care  
5 to maintain the confidentiality of all proprietary information to which the person is  
6 provided access, unless otherwise permitted in a contract entered into under sub. (5).

7 (5) A county or municipality may contract with the vendor of an electronic  
8 voting system to permit a greater degree of access to software components used with  
9 the system than is required under sub. (4).

10 **SECTION 6.** 5.91 (18) of the statutes, as created by 2003 Wisconsin Act 265, is  
11 amended to read:

12 5.91 (18) ~~It produces a permanent paper record of the vote~~ If the device consists  
13 of an electronic voting machine, it generates a complete paper ballot in conformity  
14 with the format for paper ballots prescribed by law, including specifically the  
15 type-size requirement prescribed under s. 5.51 (1), that shows all votes cast by each  
16 elector at the time that it is cast, that is visually verifiable by the elector before the  
17 elector leaves the machine, and that enables a manual count or recount of the  
18 elector's each vote cast by the elector.

19 **SECTION 7. Nonstatutory provisions.**

20 (1) Each vendor of an electronic voting system that is approved for use in this  
21 state under section 5.91 of the statutes on the effective date of this subsection or that  
22 obtains such approval for its system before the effective date of rules promulgated  
23 by the board under section 5.905 (3) of the statutes, as created by this act, shall  
24 provide to the elections board the software components required under section 5.905

1 (2) of the statutes, as created by this act, no later than 90 days after the effective date  
2 of those rules.

3 **SECTION 8. Initial applicability.**

4 (1) This act first applies with respect to elections held on the effective date of  
5 this subsection.

6 **SECTION 9. Effective date.**

7 (1) This act takes effect on January 1, 2006, or the day after publication,  
8 whichever is later.

9 (END)