



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2005 ASSEMBLY BILL 627**

November 10, 2005 - Offered by Representatives FREESE and POCAN.

1 **AN ACT to amend** 5.51 (1), 5.84 (title), 5.90 and 5.91 (18); and **to create** 5.905
2 of the statutes; **relating to:** the size of type for text printed or displayed on
3 ballots, electronic voting system standards, recount procedures, and software
4 components, and granting rule-making authority.

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 deletes the minimum type size requirement.

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, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, 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 permanent paper record 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.

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:

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

1 **SECTION 2.** 5.84 (title) of the statutes is amended to read:

2 **5.84** (title) **Testing of equipment; custody of requirements for programs**
3 **and ballots.**

4 **SECTION 3.** 5.90 of the statutes is amended to read:

5 **5.90 Recounts.** Except as otherwise provided in this subchapter, recounts of
6 votes cast on an electronic voting system shall be conducted in the manner prescribed
7 in s. 9.01. If the ballots are ~~in readable form~~ distributed to the electors, the board
8 of canvassers may elect to recount the ballots without the aid of automatic tabulating
9 equipment. If the board of canvassers elects to use automatic tabulating equipment,
10 the board of canvassers shall test the automatic tabulating equipment to be used
11 prior to the recount as provided in s. 5.84, and then the official ballots or the record
12 of the votes cast shall be recounted on the automatic tabulating equipment. In
13 addition, the board of canvassers shall check the ballots for the presence or absence
14 of the initials and other distinguishing marks, shall examine the ballots marked
15 “Rejected”, “Defective” and “Objected to” to determine the propriety of such labels,
16 and shall compare the “Duplicate Overvoted Ballots” and “Duplicate Damaged
17 Ballots” with their respective originals to determine the correctness of the
18 duplicates. If electronic voting machines are used, the board of canvassers shall
19 perform the recount using the permanent paper record of the votes cast by each
20 elector, as generated by the machines.

21 **SECTION 4.** 5.905 of the statutes is created to read:

22 **5.905 Software components.** (1) In this section, “software component”
23 includes vote-counting source code, table structures, modules, program narratives
24 and other human-readable computer instructions used to count votes with an
25 electronic voting system.

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

11 **(3)** The board shall promulgate rules to ensure the security, review and
12 verification of software components used with each electronic voting system
13 approved by the board. The verification procedure shall include a determination that
14 the software components correspond to the instructions actually used by the system
15 to count votes.

16 **(4)** If a valid petition for a recount is filed under s. 9.01 in an election at which
17 an electronic voting system was used to record and tally the votes cast, each party
18 to the recount may designate one or more persons who are authorized to receive
19 access to the software components that were used to record and tally the votes in the
20 election. The board shall grant access to the software components to each designated
21 person if, before receiving access, the person enters into a written agreement with
22 the board that obligates the person to exercise the highest degree of reasonable care
23 to maintain the confidentiality of all proprietary information to which the person is
24 provided access, unless otherwise permitted in a contract entered into under sub. (5).

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

4 **SECTION 5.** 5.91 (18) of the statutes, as created by 2003 Wisconsin Act 265, is
5 amended to read:

6 5.91 (18) ~~It produces a permanent paper record of the vote~~ If the device consists
7 of an electronic voting machine, it generates a complete, permanent paper record
8 showing all votes cast by each elector at the time that it is cast, that is verifiable by
9 the elector, by either visual or nonvisual means as appropriate, before the elector
10 leaves the voting area, and that enables a manual count or recount of ~~the elector's~~
11 each vote cast by the elector.

12 **SECTION 6. Nonstatutory provisions.**

13 (1) Each vendor of an electronic voting system that is approved for use in this
14 state under section 5.91 of the statutes on the effective date of this subsection or that
15 obtains such approval for its system before the effective date of rules promulgated
16 by the board under section 5.905 (3) of the statutes, as created by this act, shall
17 provide to the elections board the software components required under section 5.905
18 (2) of the statutes, as created by this act, no later than 90 days after the effective date
19 of those rules.

20 **SECTION 7. Initial applicability.**

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

23 **SECTION 8. Effective date.**

