



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 646**

April 8, 2010 – Offered by COMMITTEE ON ELECTIONS AND CAMPAIGN REFORM.

1 **AN ACT** *to repeal* 7.23 (1) (b); *to amend* 7.23 (1) (f), 7.23 (1) (g), 7.23 (1) (h) and
2 7.23 (2); and *to create* 5.02 (4s) of the statutes; **relating to:** the period for
3 retention of certain election materials in state and local elections.

Analysis by the Legislative Reference Bureau

Currently, detachable recording units and compartments for use with electronic voting machines may be cleared or erased no earlier than 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk or board of election commissioners must transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed no earlier than 22 months after the election to which the data relates.

This substitute amendment exempts municipalities from this transfer requirement if the recording units and compartments are for use with tabulating equipment for an electronic voting system that was approved by the Government Accountability Board for use prior to January 1, 2009. However, the exemption applies only at an election at which no federal office appears on the ballot. The substitute amendment does not permit the clearing or erasing of such recording units or compartments while a recount or appeal of a recount determination or decision is pending nor during the time period following a recount or appeal of a recount determination or decision when an appeal or petition for review may be filed

except by order of a court in which an appeal is pending. The substitute amendment also applies the same limitation concerning pending recounts, appeals, and appeal periods to other materials relating to a specific election.

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

1 **SECTION 1.** 5.02 (4s) of the statutes is created to read:

2 5.02 (4s) “Federal election” means any election at which a national office
3 appears on the ballot.

4 **SECTION 2.** 7.23 (1) (b) of the statutes is repealed.

5 **SECTION 3.** 7.23 (1) (f) of the statutes is amended to read:

6 7.23 (1) (f) Except as authorized in ~~pars. (b) and par.~~ (g), ballots, applications
7 for absentee ballots, registration forms, or other records and papers requisite to
8 voting at any federal election, other than registration cards, may be destroyed after
9 22 months.

10 **SECTION 4.** 7.23 (1) (g) of the statutes is amended to read:

11 7.23 (1) (g) Detachable recording units and compartments for use with
12 tabulating equipment for an electronic voting machines system may be cleared or
13 erased 14 days after any primary and 21 days after any other election. Before
14 clearing or erasing the units or compartments, a municipal clerk shall transfer the
15 data contained in the units or compartments to a disk or other recording medium
16 which may be erased or destroyed 22 months after the election to which the data
17 relates. The requirement to transfer data does not apply to units or compartments
18 for use with tabulating equipment for an electronic voting system that was approved
19 for use prior to January 1, 2009, and that is not used in a federal election.

20 **SECTION 5.** 7.23 (1) (h) of the statutes is amended to read:

1 7.23 (1) (h) ~~Ballots~~ Except as provided in par. (f), ballots may be destroyed 30
2 days after any election.

3 **SECTION 6.** 7.23 (2) of the statutes is amended to read:

4 7.23 (2) If a recount is pending or if the time allowed for filing a recount petition
5 at any election or an appeal or petition for review of any recount determination or
6 decision at an election has not expired, no materials may be destroyed until after the
7 recount is completed and the applicable time period has expired. In addition, if there
8 is a demand for a recount, notice of an election contest or any contest or litigation
9 pending with respect to a recount at an election, materials may be destroyed and
10 recorders, recording units or compartments may be cleared or erased only by order
11 of the judge in whose court in which litigation is pending or if no litigation is pending,
12 by order of any circuit judge for the affected jurisdiction. Upon petition of the
13 attorney general or a district attorney or U.S. attorney for the affected jurisdiction,
14 a circuit judge for the affected jurisdiction may order that specified materials not be
15 destroyed or that specified recorders, units or compartments not be cleared or erased
16 as otherwise authorized under this subsection until the court so permits. The
17 governor may by order permit the clearing of voting machine recorders on machines
18 needed to conduct a special election prior to the time authorized under this
19 subsection, unless there is a demand for recount, notice of an election contest or a
20 contest or litigation pending, or a court of record orders that the recorders not be
21 cleared.

22 **SECTION 7. Initial applicability.**

23 (1) This act first applies with respect to elections held after the effective date
24 of this subsection.

25 (END)