



2005 ASSEMBLY BILL 377

April 27, 2005 - Introduced by Representatives DAVIS, FREESE, GARD, GUNDRUM, FRISKE, VOS, TOWNS, JENSEN, HINES, VRAKAS, J. FITZGERALD, PRIDEMORE, M. WILLIAMS, MOULTON, LAMB, KLEEFISCH, STRACHOTA, MUSSER, KESTELL, ALBERS, HUNDERTMARK, OTT, MURSAU, NISCHKE, VAN ROY, MCCORMICK, SUDER and KREIBICH, cosponsored by Senators LEIBHAM, ZIEN, BROWN and ERPENBACH. Referred to Committee on Campaigns and Elections.

1 **AN ACT to amend** 6.22 (1) (intro.), 6.22 (5), 6.22 (6), 6.36 (1) (a), 6.86 (1) (b), 6.865
2 (3), 6.87 (6), 7.51 (5) (b), 7.60 (5) (a), 7.70 (3) (a), 9.01 (1) (a), 9.01 (1) (ag) 1., 1m.
3 and 2. and 9.01 (1) (b) (intro.); and **to create** 6.221, 6.865 (3m) and 9.01 (1) (am)
4 of the statutes; **relating to:** absentee balloting by certain military electors.

Analysis by the Legislative Reference Bureau

Currently, for the absentee ballot of any elector to be counted, the ballot must be received at the polling place serving the elector's residence no later than the closing hour.

This bill provides that the absentee ballots of certain electors defined as "military electors" under the bill shall be counted at the September primary and general (November) election if the ballots are received by mail bearing a postmark dated on or before election day and the ballots are received by the municipal clerk or board of election commissioners of the municipality where the elector resides no later than seven days after the September primary or no later than ten days after the general election. The bill provides that if a postmark is missing or illegible, and the ballot is received by mail, the ballot is presumed to be received by election day, unless established by a preponderance of the evidence to the contrary. Under the bill, a "military elector" is any individual who, as of election day, is: 1) a member of a uniformed service on active duty and who, by reason of that duty, is absent from his or her residence; 2) a member of the merchant marine and who, by reason of service in the merchant marine, is absent from his or her residence; or 3) the spouse or

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dependent of any such member and who, by reason of service of the member, is absent from his or her residence.

Because the pendency of late ballots could result in changes to original election returns, the bill directs each municipal clerk and board of election commissioners to post at the clerk's or board's office and on the Internet, and to make available to any person upon request, a statement of the number of ballots of military electors to whom absentee ballots have been sent but whose ballots have not been returned as of election night. Under the bill, upon receiving a late absentee ballot that is eligible to be counted, a municipal clerk or board of election commissioners notifies the board or boards of canvassers that canvassed the original returns, which must then reconvene, canvass the late ballots, and issue amended returns. The bill slightly adjusts canvassing deadlines to accommodate the revised canvassing process, but does not adjust the deadline for mailing or transmittal of absentee ballots for the general election (which may be affected by any delay in finalizing the September primary canvass). The bill does not adjust the deadline for filing a petition for recount. However, the bill provides that a pending recount shall not proceed until immediately after the original canvass, reflecting any amended returns, is complete.

Currently, the deadline for application for an absentee ballot to be received by mail is 5 p.m. on the Friday before election day. The bill advances the deadline at the September primary and general election, for military electors only, to 5 p.m. on election day.

Currently, electors who wish to vote by absentee ballot must request a ballot for each election individually, except that a military elector or an overseas elector (U.S. citizen residing outside the United States) may request to receive an absentee ballot for the next two general elections at the same time. In addition, an elector who is indefinitely confined may request to receive absentee ballots automatically for every election and may continue to receive those ballots as long as they are cast or the elector renews his or her request. With certain exceptions, this bill directs each municipal clerk or board of election commissioners who receives an absentee ballot request from a military elector to send the elector absentee ballots for the next three general elections and all other elections beginning with the date of the request and ending with the third successive general election following receipt of the request regardless of whether the ballots are cast, unless the elector otherwise requests. With certain exceptions, if the elector casts an absentee ballot, the elector continues to receive absentee ballots for all elections until after the third successive general election following the last election at which the elector cast a ballot.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

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1 6.22 (1) DEFINITIONS. (intro.) In this section, except as otherwise provided:

2 **SECTION 2.** 6.22 (5) of the statutes is amended to read:

3 6.22 (5) VOTING PROCEDURE. Except as provided in s. 6.221 and as authorized
4 in s. 6.25, the ballot shall be marked and returned, deposited and recorded in the
5 same manner as other absentee ballots. In addition, the certification under s. 6.87
6 (2) shall have a statement of the elector's birth date. Failure to return any unused
7 ballots in a primary election does not invalidate the ballot on which the elector casts
8 his or her votes.

9 **SECTION 3.** 6.22 (6) of the statutes is amended to read:

10 6.22 (6) MILITARY ELECTOR LIST. Each municipal clerk shall keep an up-to-date
11 list of all eligible ~~local~~ military electors who reside in the municipality; city clerks
12 shall keep the lists by wards. The list shall contain the name, latest-known military
13 residence and military mailing address of each military elector. The list shall
14 indicate whether each elector whose name appears on the list is a military elector,
15 as defined in s. 6.36 (2) (c), and has so certified under s. 6.865 (3m). All persons over
16 18 years of age or who will be 18 years old prior to an election shall be listed and
17 remain on the list for the duration of their tour of duty. The list shall be kept current
18 through all possible means. Each clerk shall exercise reasonable care to avoid
19 duplication of names or listing anyone who is not eligible to vote. Each clerk shall
20 distribute 2 copies of the list to the appropriate ward in the municipality for use on
21 election day.

22 **SECTION 4.** 6.221 of the statutes is created to read:

23 **6.221 Counting of absentee ballots for certain military electors;**
24 **September primary and general election. (1)** In this section, "military elector"

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1 has the meaning given in s. 6.36 (2) (c) and active duty status for any election is
2 determined as of election day.

3 (2) Each certificate envelope that is mailed or transmitted to a military elector
4 under this section shall be clearly labeled as “Cast by a military elector under s.
5 6.221, Wis. Stats., and may be eligible to be counted after election day.”

6 (3) (a) At the September primary, a ballot that is cast under s. 6.22 by an elector
7 who is a military elector, that is received by mail from the U. S. postal service, and
8 that is postmarked no later than election day shall be counted as provided in this
9 section if it is received by a municipal clerk no later than 5 p.m. on the 7th day after
10 the election.

11 (b) At the general election, a ballot that is cast under s. 6.22 by an elector who
12 is a military elector, that is received by mail from the U.S. postal service, and that
13 is postmarked no later than election day shall be counted as provided in this section
14 if it is received by a municipal clerk no later than 5 p.m. on the 10th day after the
15 election.

16 (4) For purposes of sub. (3), if a certificate envelope is not postmarked or has
17 a postmark that is not legible to the board of canvassers, and the envelope was
18 received by mail from the U.S. postal service in the manner and within the period
19 prescribed in sub. (3), it is presumed that the envelope was placed in the mail on or
20 before election day, unless established by a preponderance of the evidence to the
21 contrary.

22 (5) No later than the closing hour of the polls on the day of the September
23 primary and the day of the general election, the municipal clerk of each municipality
24 shall post at his or her office and on the Internet at a site announced by the clerk
25 before the polls open, and shall make available to any person upon request, a

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1 statement of the number of absentee ballots that the clerk has mailed or transmitted
2 to military electors under this section and that have not been returned to the polling
3 places where the electors reside by the closing hour on election day. The posting shall
4 not include the names or addresses of any military electors.

5 (6) (a) Whenever the municipal clerk of any municipality receives an absentee
6 ballot cast by an elector who is a military elector under this section and the ballot is
7 not received in sufficient time for delivery to the polling place serving the residence
8 of the elector on election day but is received within the time specified in sub. (3), the
9 clerk shall promptly provide written notice to the board of canvassers of each
10 municipality, special purpose district, and county that is responsible for canvassing
11 the election of the number of such ballots that have been cast received by the clerk
12 in each ward or election district.

13 (b) Whenever a board of canvassers receives notification from a municipal clerk
14 under par. (a), the board of canvassers shall reconvene no later than 9 a.m. on the
15 day after the last day permitted for acceptance of absentee ballots under sub. (3) and
16 shall proceed to open and record the names of the military electors whose ballots
17 have been received. If the ballot cast by a military elector is otherwise valid, the
18 board of canvassers shall count the ballot and adjust the statements, certifications,
19 and determinations accordingly. If the municipal clerk transmits returns of the
20 election to the county clerk, the municipal clerk shall transmit to the county clerk
21 a copy of the amended returns together with all additional ballots and envelopes
22 reviewed by the board of canvassers and with amended tally sheets.

23 **SECTION 5.** 6.36 (1) (a) of the statutes is amended to read:

24 6.36 (1) (a) The board shall compile and maintain electronically an official
25 registration list. The list shall contain the name and address of each registered

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1 elector in the state, the date of birth of the elector, the ward and aldermanic district
2 of the elector, if any, and, for each elector, a unique registration identification number
3 assigned by the board, the number of a valid operator's license issued to the elector
4 under ch. 343, if any, or the last 4 digits of the elector's social security account
5 number, if any, any identification serial number issued to the elector under s. 6.47
6 (3), the date of any election in which the elector votes, an indication of whether the
7 elector is a military elector, as defined in sub. (2) (c), who has so certified under s.
8 6.865 (3m), an indication of whether the elector is an overseas elector, as defined in
9 s. 6.24 (1), an indication of any accommodation required under s. 5.25 (4) (a) to permit
10 voting by the elector, an indication of the method by which the elector's registration
11 form was received, and such other information as may be determined by the board
12 to facilitate administration of elector registration requirements.

13 **SECTION 6.** 6.86 (1) (b) of the statutes is amended to read:

14 6.86 (1) (b) Except as provided in this section, if application is made in writing,
15 the application, signed by the elector, shall be received no later than 5 p.m. on the
16 Friday immediately preceding the election. If application is made in person, the
17 application shall be made no later than 5 p.m. on the day preceding the election. If
18 the elector is making written application for an absentee ballot at the September
19 primary or general election and the application indicates that the elector is a military
20 elector, as defined in s. 6.36 (2) (c), the application shall be received by the municipal
21 clerk no later than 5 p.m. on election day. If the elector is making written application
22 and the application indicates that the reason for requesting an absentee ballot is that
23 the elector is a sequestered juror, the application shall be received no later than 5
24 p.m. on election day. If the application is received after 5 p.m. on the Friday
25 immediately preceding the election, the municipal clerk or the clerk's agent shall

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1 immediately take the ballot to the court in which the elector is serving as a juror and
2 deposit it with the judge. The judge shall recess court, as soon as convenient, and
3 give the elector the ballot. The judge shall then witness the voting procedure as
4 provided in s. 6.87 and shall deliver the ballot to the clerk or agent of the clerk who
5 shall deliver it to the polling place as required in s. 6.88. If application is made under
6 sub. (2), the application may be received no later than 5 p.m. on the Friday
7 immediately preceding the election.

8 **SECTION 7.** 6.865 (3) of the statutes is amended to read:

9 6.865 (3) If Except as provided in sub. (3m), if the elector making a timely
10 request for an absentee ballot is a military elector or an overseas elector and the
11 elector requests that he or she be sent an absentee ballot for the next 2 general
12 elections, the municipal clerk or board of election commissioners shall comply with
13 the request except that no ballot shall be sent for a succeeding general election if the
14 elector's name appeared on the registration list for a previous general election and
15 no longer appears on the registration list for the succeeding general election. If the
16 elector's address for the succeeding general election is in a municipality that is
17 different from the municipality in which the elector resided for the first general
18 election, the clerk or board of election commissioners shall forward the request to the
19 clerk or board of election commissioners of the municipality where the elector
20 resides.

21 **SECTION 8.** 6.865 (3m) of the statutes is created to read:

22 6.865 (3m) (a) Except as provided in par. (c), if any elector who certifies that
23 he or she will be a military elector on election day requests an absentee ballot, the
24 municipal clerk shall send or transmit to the elector an absentee ballot for all
25 elections that occur in the municipality or portion thereof where the elector resides

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1 beginning on the date that the clerk receives the request and ending on the day after
2 the 3rd successive general election that follows receipt of the request, unless the
3 elector otherwise requests. In addition, the municipal clerk shall continue to send
4 or transmit to the elector an absentee ballot for all elections ending on the day after
5 the 3rd successive general election that follows any election at which the elector
6 returns an absentee ballot under this section or renews his or her request under par.
7 (c).

8 (b) A military elector may indicate an alternate address on his or her absentee
9 ballot application. If the elector's ballot is returned as undeliverable prior to the
10 deadline for receipt and return of absentee ballots under sub. (3) and the elector
11 remains eligible to receive absentee ballots under this subsection, the municipal
12 clerk shall immediately send or transmit an absentee ballot to the elector at the
13 alternate address.

14 (c) If there occur 3 successive general elections at which a military elector fails
15 to return an absentee ballot sent or transmitted to the elector under this subsection
16 and the elector has not cast an absentee ballot at any intervening election, if the clerk
17 is reliably informed that the elector is no longer a military elector or no longer resides
18 in the municipality, or if the elector so requests, the clerk shall discontinue sending
19 or transmitting absentee ballots to the elector under this subsection. If a military
20 elector is subject to a registration requirement and the name of the military elector
21 no longer appears on the registration list, the municipal clerk shall discontinue
22 sending or transmitting absentee ballots to the elector under this subsection. If a
23 military elector who has requested an absentee ballot changes his or her residence
24 from the municipality where a request is filed to another municipality in this state,
25 the municipal clerk of the municipality who received the request shall notify the

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1 clerk of the municipality to which the elector's residence is changed of the date of the
2 request or latest renewal and the date of the most recent absentee ballot returned
3 by the elector, and the municipal clerk who is so notified shall treat the request as
4 having been made to him or her. Prior to any discontinuance of the service provided
5 to a military elector under this subsection solely for failure to return absentee ballots,
6 the municipal clerk shall mail the elector a 1st class letter or postcard notifying the
7 elector that absentee ballots will no longer be sent to the elector unless the elector
8 renews his or her request within 30 days of the date of the notification. The clerk
9 shall notify a military elector of any action under this paragraph that is not taken
10 at the elector's request within 5 days of taking that action, if possible.

11 **SECTION 9.** 6.87 (6) of the statutes is amended to read:

12 6.87 (6) The Except as provided in s. 6.221 (3), the ballot shall be returned so
13 it is received by the municipal clerk in time for delivery to the polls before the closing
14 hour. Any Except as provided in s. 6.221 (3), the ballot not mailed or delivered as
15 provided in this subsection may not be counted.

16 **SECTION 10.** 7.51 (5) (b) of the statutes is amended to read:

17 7.51 (5) (b) The municipal clerk shall arrange for delivery of all ballots,
18 statements, tally sheets, lists, and envelopes relating to a school district election to
19 the school district clerk. The municipal clerk shall deliver the ballots, statements,
20 tally sheets, lists, and envelopes for his or her municipality relating to any county,
21 technical college district, state, or national election to the county clerk by no later
22 than 2 p.m. on the day following each such election, and no later than 2 p.m. on the
23 day after receiving any corrected returns under s. 6.221 (6) (b). The person delivering
24 the returns shall be paid out of the municipal treasury. Each clerk shall retain

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1 ballots, statements, tally sheets, or envelopes received by the clerk until destruction
2 is authorized under s. 7.23 (1).

3 **SECTION 11.** 7.60 (5) (a) of the statutes is amended to read:

4 7.60 (5) (a) Immediately following the canvass, the county clerk shall deliver
5 or send to the elections board, by 1st class mail, a certified copy of each statement of
6 the county board of canvassers for president and vice president, state officials,
7 senators and representatives in congress, state legislators, justice, court of appeals
8 judge, circuit judge, district attorney, and metropolitan sewerage commissioners, if
9 the commissioners are elected under s. 200.09 (11) (am). The statement shall record
10 the returns for each office or referendum by ward, unless combined returns are
11 authorized under s. 5.15 (6) (b) in which case the statement shall record the returns
12 for each group of combined wards. Following primaries the county clerk shall enclose
13 on forms prescribed by the elections board the names, party or principle designation,
14 if any, and number of votes received by each candidate recorded in the same manner.
15 The county clerk shall deliver or transmit the certified statement to the elections
16 board no later than 7 days after each primary and except the September primary, no
17 later than 10 days after the September primary and any other election except the
18 general election, and no later than 14 days after the general election. The board of
19 canvassers shall deliver or transmit a certified copy of each statement for any
20 technical college district referendum to the secretary of the technical college district
21 board.

22 **SECTION 12.** 7.70 (3) (a) of the statutes is amended to read:

23 7.70 (3) (a) The chairperson of the board or a designee of the chairperson
24 appointed by the chairperson to canvass a specific election shall publicly canvass the
25 returns and make his or her certifications and determinations on or before the 2nd

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1 Tuesday following a spring primary, the 15th day of May following a spring election,
2 the ~~4th Tuesday in September~~ 3rd Wednesday following a September primary, the
3 first day of December following a general election, the 2nd Thursday following a
4 special primary, or within 18 days after any special election.

5 **SECTION 13.** 9.01 (1) (a) of the statutes is amended to read:

6 9.01 (1) (a) Any candidate voted for at any election or any elector who voted
7 upon any referendum question at any election may request a recount. The petitioner
8 shall file a verified petition or petitions with the proper clerk or body under par. (ar)
9 not earlier than the time of completion of the canvass and not later than 5 p.m. on
10 the 3rd business day following the last meeting day of the municipal or county board
11 of canvassers determining the election for that office or on that referendum question
12 prior to issuance of any amended return under s. 6.221 (6) (b) or, if more than one
13 board of canvassers makes the determination not later than 5 p.m. on the 3rd
14 business day following the last meeting day of the last board of canvassers which
15 makes a determination prior to issuance of any amended return under s. 6.221 (6)
16 (b). If the chairperson of the board or chairperson's designee makes the
17 determination for the office or the referendum question, the petitioner shall file the
18 petition not earlier than the last meeting day of the last county board of canvassers
19 to make a statement in the election or referendum and not later than 5 p.m. on the
20 3rd business day following the day on which the elections board receives the last
21 statement from a county board of canvassers for the election or referendum. Each
22 verified petition shall state that at the election the petitioner was a candidate for the
23 office in question or that he or she voted on the referendum question in issue; that
24 the petitioner is informed and believes that a mistake or fraud has been committed
25 in a specified ward or municipality in the counting and return of the votes cast for

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1 the office or upon the question; or shall specify any other defect, irregularity or
2 illegality in the conduct of the election. The petition shall specify each ward, or each
3 municipality where no wards exist, in which a recount is desired. If a recount is
4 requested for all wards within a jurisdiction, each ward need not be specified. The
5 petition may be amended to include information discovered as a result of the
6 investigation of the board of canvassers or the chairperson of the board or
7 chairperson's designee after the filing of the petition, if the petitioner moves to
8 amend the petition as soon as possible after the petitioner discovered or reasonably
9 should have discovered the information which is the subject of the amendment and
10 the petitioner was unable to include information in the original petition.

11 **SECTION 14.** 9.01 (1) (ag) 1., 1m. and 2. of the statutes are amended to read:

12 9.01 (1) (ag) 1. If the difference between the votes cast for the leading candidate
13 and those cast for the petitioner or the difference between the affirmative and
14 negative votes cast upon any referendum question is less than 10 if 1,000 or less votes
15 are cast or not more than 0.5% of the total votes cast for the office or on the question
16 if more than 1,000 votes are cast prior to issuance of any amended return under s.
17 6.221 (6) (b), the petitioner is not required to pay a fee.

18 1m. If the difference between the votes cast for the leading candidate and those
19 cast for the petitioner or the difference between the affirmative and negative votes
20 cast upon any referendum question is at least 10 if 1,000 or less votes are cast or is
21 more than 0.5% but not more than 2% if more than 1,000 votes are cast prior to
22 issuance of any amended return under s. 6.221 (6) (b), the petitioner shall pay a fee
23 of \$5 for each ward for which the petition requests a ballot recount, or \$5 for each
24 municipality for which the petition requests a recount where no wards exist.

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1 2. If the difference between the votes cast for the leading candidate and those
2 cast for the petitioner or the difference between the affirmative and negative votes
3 cast upon any referendum question is more than 2% if more than 1,000 votes are cast
4 prior to issuance of any amended return under s. 6.221 (6) (b), the petitioner shall
5 pay a fee equal to the actual cost of performing the recount in each ward for which
6 the petition requests a recount, or in each municipality for which the petition request
7 a recount where no wards exist.

8 **SECTION 15.** 9.01 (1) (am) of the statutes is created to read:

9 9.01 (1) (am) A person who files a petition under par. (a) may withdraw the
10 petition. If the petitioner withdraws a petition before any board of canvassers that
11 canvassed the original election begins its recount, the clerk or body shall refund any
12 fee paid under par. (ag).

13 **SECTION 16.** 9.01 (1) (b) (intro.) of the statutes is amended to read:

14 9.01 (1) (b) (intro.) The proper board of canvassers shall reconvene no earlier
15 than 9 a.m. on the day following delivery of notice to all candidates under sub. (2) and
16 no later than 9 a.m. on the day following the last day for filing of a petition ~~and, or~~
17 if the original canvass is subject to correction under s. 6.221 (6) (b), immediately after
18 issuance of the amended statement and determination in the original canvass,
19 whichever is later. The board of canvassers shall then proceed to recount the ballots
20 in the wards or municipalities specified and to review the allegations of fact
21 contained in the petition or petitions. The recount shall proceed for each ward or
22 municipality as follows:

23 **SECTION 17. Initial applicability.**

24 (1) This act first applies with respect to the 2006 spring primary election.

25 **SECTION 18. Effective date.**

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SECTION 18

1 (1) This act takes effect on January 1, 2006.

2 (END)