

1 **AN ACT** *to amend* 6.22 (5) and 6.87 (6); and *to create* 6.22 (5m) of the statutes;
2 **relating to:** late arriving military ballots.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on election law review.

Under current law, absentee ballots must be returned to the municipal clerk in time for delivery to the polls before the polls close. Any ballot not delivered by this deadline may not be counted.

This draft provides that a ballot cast by a "military elector" that is received by the municipal clerk after the close of the polls may, in some situations, still be counted. Under the draft, such a ballot that is received after the polls close is considered a valid ballot if it is received by the clerk [by the deadline for requesting a recount] [before 5 p.m. or the close of business, whichever is later, on the 3rd business day following the close of the polls] and if it contains a postal service cancellation mark dated on or before the election day for which the ballot was cast. However, under the draft these ballots will not be counted unless a recount occurs. For purposes of the draft, a "military elector" includes:

- Members of a uniformed service (i.e., the U.S. army, navy, air force, marine corps, or coast guard, the commissioned corps of the federal public health service or the national oceanic and atmospheric administration).
- Members of the U.S. merchant marine.
- Civilian employees of the U.S. and civilians officially attached to a uniformed service who are serving outside the U.S.
- Peace corps volunteers.
- Spouses and dependents of the above who reside with or accompany them.

The draft contains an effective date of January 1, 2006.

3 **SECTION 1.** 6.22 (5) of the statutes is amended to read:

1 6.22 (5) VOTING PROCEDURE. Except as authorized in sub. (5m) and s. 6.25, the ballot
2 shall be marked and returned, deposited and recorded in the same manner as other absentee
3 ballots. In addition, the certification under s. 6.87 (2) shall have a statement of the elector's
4 birth date. Failure to return any unused ballots in a primary election does not invalidate the
5 ballot on which the elector casts his or her votes.

6 **SECTION 2.** 6.22 (5m) of the statutes is created to read:

7 6.22 (5m) A ballot cast under this section that is received by the municipal clerk after
8 the close of the polls but before [the deadline for filing a recount under s. 9.01 (a)] [5 p.m. or
9 the close of business, whichever is later, on the 3rd business day following the close of the
10 polls] shall be treated as a valid vote if the envelope in which the ballot was received bears a
11 postal service cancellation mark dated on or before the election day for which the ballot was
12 cast, but may only be counted for purposes of a recount under s. 9.01. All ballots received
13 under this subsection shall be carefully preserved, subject to s. 7.23, by the municipal clerk
14 and, in the event a petition for a recount is filed under s. 9.01, the clerk shall transmit such
15 ballots to the appropriate board of canvassers to be included in the recount.

COMMENT: The draft provides 2 potential deadlines for return of these late absentee ballots cast by military electors. One deadline would effectively be the end of the 3rd day after the polls close. The other deadline would be the deadline for filing a recount petition. This would, in essence, provide for a deadline of 5 p.m. on the 3rd business day after the final canvass is completed for the office for which the recount is sought. This date will vary depending on the office sought, the election at which the office is sought, and the number of canvassing boards involved. For example, for a state office the canvass must be completed by the 2nd Tuesday following a spring primary, the 15th day of May following a spring election, the 4th Tuesday in September following a September primary, or the first day of December following the general election. However, the municipal canvass for local office must be completed by the 2nd Tuesday in April. Accordingly, different deadlines for acceptance of late-arriving military ballots will apply, possibly for the same election.

In addition, this draft will likely need a procedure added to it for opening and counting absentee ballots of military electors received under this provision by the board of canvassers at a recount proceeding. No similar process exists under current law. Should municipal clerks be responsible for starting the processing or should the board of canvassers be responsible for all of it? Should these ballots simply be included with all the other ballots or should they be counted separately and added to the totals? Should they only be counted if the original count proves to be inaccurate?

SECTION 3. 6.87 (6) of the statutes is amended to read:

6.87 (6) The Except as provided in s. 6.22 (5m), the ballot shall be returned so it is received by the municipal clerk in time for delivery to the polls before the closing hour. ~~Any~~ Except as provided in s. 6.22 (5m), any ballot not mailed or delivered as provided in this subsection may not be counted.

SECTION 4. Effective date. This act takes effect on January 1, 2006.

(END)