

1       **AN ACT** *to repeal* 6.87 (3) (c); *to amend* 6.24 (6), 6.85, 6.865 (2), 6.87 (2), 6.87 (3)  
2           (a), 6.87 (3) (d) and 10.01 (2) (e); and *to create* 6.87 (10) of the statutes; **relating to:**  
3           requesting an absentee ballot by mail.

*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, an elector may request and cast an absentee ballot if he or she is unable or unwilling to appear at the polls. This "no excuse" system was adopted by 1999 Wisconsin Act 182. Prior to that act, in order to receive an absentee ballot an elector was required to have an excuse such as sickness, or absence from the municipality. This bill would partially reinstate the requirement for an excuse. Under the bill, electors who want to have an absentee ballot sent to them would have to provide an excuse. The list of acceptable excuses is identical to those contained in the law prior to Act 182. In addition, the bill would delete the current requirement that absentee ballots be sent with return postage paid. However, the bill allows any elector, regardless of whether he or she has an excuse, to vote an absentee ballot in the municipal clerk's office.

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

4       **SECTION 1.** 6.24 (6) of the statutes is amended to read:  
5           **6.24 (6) INSTRUCTIONS AND HANDLING.** The municipal clerk shall send a ballot, as soon  
6           as available, to each overseas elector by whom a request has been made. The board shall  
7           prescribe the instructions for marking and returning ballots and the municipal clerk shall  
8           enclose such instructions with each ballot. The envelope, return envelope and instructions  
9           may not contain the name of any candidate appearing on the enclosed ballots other than that  
10          of the municipal clerk affixed in the fulfillment of his or her duties. Except as authorized in

1 s. 6.87 (3), the municipal clerk shall mail the material ~~postage prepaid~~ [with sufficient postage  
2 to ensure that the elector receives the ballot] to any place in the world. The overseas elector  
3 shall provide return postage.

4 **SECTION 2.** 6.85 of the statutes is amended to read:

5 **6.85 Absent elector; definition.** An absent elector is any otherwise qualified elector  
6 who is or expects to be absent from the municipality in which the elector is a qualified elector  
7 on election day whether by active service in the U.S. armed forces or for any other reason is  
8 unable or unwilling to, or who because of age, sickness, handicap, physical disability, jury  
9 duty, service as an election official, or religious reasons cannot appear at the polling place in  
10 his or her ward. No person under the age of 70 qualifies as an absent elector solely because  
11 of age. Any otherwise qualified elector who changes residence within this state by moving  
12 to a different ward or municipality later than 10 days prior to an election may vote an absentee  
13 ballot in the ward or municipality where he or she was qualified to vote before moving. An  
14 elector qualifying under this section may vote by absentee ballot under ss. 6.86 to 6.89.

**NOTE:** This SECTION requires an absent elector to have a reason that he or she cannot appear at the polling place. The language largely tracks the law as it existed prior to 1999 Wisconsin Act 182, which eliminated the need for an excuse to vote absentee.

15 **SECTION 3.** 6.865 (2) of the statutes is amended to read:

16 **6.865 (2)** A federal postcard registration and absentee ballot request form may be used  
17 to apply for an absentee ballot under s. 6.86 (1) if the form is completed in such manner that  
18 the municipal clerk or board of election commissioners with whom it is filed is able to  
19 determine that the applicant is an elector of this state and of the ward or election district where  
20 the elector seeks to vote, and that the applicant qualifies for an absentee ballot under s. 6.85.

**NOTE:** The SECTION adds language indicating that the applicant must qualify as an absent elector. The language largely tracks the law as it

existed prior to 1999 Wisconsin Act 182, which eliminated the need for an excuse to vote absentee.

1       **SECTION 4.** 6.87 (2) of the statutes is amended to read:

2       6.87 (2) Except as authorized under sub. (3) (d), the municipal clerk shall place the  
3       ballot in an unsealed envelope furnished by the clerk. The envelope shall have the name,  
4       official title and post-office address of the clerk upon its face. The other side of the envelope  
5       shall have a printed certificate in substantially the following form:

6       [STATE OF ....

7       County of ....]

8       or

9       [(name of foreign country and city or other jurisdictional unit)]

10       I, ....., certify subject to the penalties of s. 12.60 (1) (b), Wis. Stats., for false statements,  
11       that I am a resident of the [.... ward of the] (town) (village) of ....., or of the .... aldermanic  
12       district in the city of ....., residing at ....\* in said city, the county of ....., state of Wisconsin, and  
13       am entitled to vote in the (ward) (election district) at the election to be held on ....; that I am  
14       not voting at any other location in this election; that I ~~am unable or unwilling to~~ cannot appear  
15       at the polling place in the (ward) (election district) on election day because I expect to be  
16       absent from the municipality or because of age, sickness, handicap, physical disability,  
17       religious reasons, jury duty, service as an election official, or because I have changed my  
18       residence within the state from one ward or election district to another within 10 days before  
19       the election; or that I am unable or unwilling to appear at the polling place in the (ward)  
20       (election district) on election day and am casting this ballot in the municipal clerk's office. I  
21       certify that I exhibited the enclosed ballot unmarked to the witness, that I then in (his) (her)  
22       presence and in the presence of no other person marked the ballot and enclosed and sealed the

1 same in this envelope in such a manner that no one but myself and any person rendering  
2 assistance under s. 6.87 (5), Wis. Stats., if I requested assistance, could know how I voted.

3 Signed ....

4 Identification serial number, if any: ....

5 The witness shall execute the following:

6 I, the undersigned witness, subject to the penalties of s. 12.60 (1) (b), Wis. Stats., for  
7 false statements, certify that the above statements are true and the voting procedure was  
8 executed as there stated. I am not a candidate for any office on the enclosed ballot (except in  
9 the case of an incumbent municipal clerk). I did not solicit or advise the elector to vote for  
10 or against any candidate or measure.

11 ....(Name)

12 ....(Address)\*\*

13 \* — An elector who provides an identification serial number issued under s. 6.47 (3),  
14 Wis. Stats., need not provide a street address.

15 \*\* — If this form is executed before 2 special voting deputies under s. 6.875 (6), Wis.  
16 Stats., both deputies shall witness and sign.

**NOTE:** This SECTION amends the certification to reflect the fact that an elector can only receive an absentee ballot in the mail if the elector cannot appear at the polling place. The language largely tracks the law as it existed prior to 1999 Wisconsin Act 182, which eliminated the need for an excuse to vote absentee.

17 **SECTION 5.** 6.87 (3) (a) of the statutes is amended to read:

18 6.87 (3) (a) Except as authorized under par. (d) and as otherwise provided in s. 6.875,  
19 the municipal clerk shall mail the absentee ballot ~~postage prepaid for return~~ to the elector's  
20 residence unless otherwise directed, or shall deliver it to the elector personally at the clerk's  
21 office. If the ballot is mailed, the elector shall provide return postage. If the ballot is delivered

1 to the elector at the clerk's office, the ballots shall be voted at the office and may not be  
2 removed therefrom.

**NOTE:** This SECTION eliminates the requirement that an absentee ballot be mailed with prepaid postage. The last sentence was moved from current s. 6.87 (3) (c), which is deleted by this draft.

**COMMENT:** A question was raised as to when the postage prepaid requirement was enacted. A brief search revealed that the requirement dates from at least 1915.

3 **SECTION 6.** 6.87 (3) (c) of the statutes is repealed.

**NOTE:** Section 6.87 (3) (c) reads as follows: "If an elector's ballot is mailed to a location other than the elector's residence, it shall be prepaid for return when mailed within the United States. If the ballot is delivered to the elector at the clerk's office, the ballot shall be voted at the office and may not be removed therefrom". The first sentence is deleted because the draft eliminates the requirement that the clerk mail ballots with prepaid postage. The second sentence has been moved to s. 6.87 (3) (a).

4 **SECTION 7.** 6.87 (3) (d) of the statutes is amended to read:

5 6.87 (3) (d) A municipal clerk of a municipality may, if the clerk is reliably informed  
6 by an absent elector of a facsimile transmission number or electronic mail address where the  
7 elector can receive an absentee ballot, transmit a facsimile or electronic copy of the absent  
8 elector's ballot to that elector in lieu of mailing under this subsection if, in the judgment of the  
9 clerk, the time required to send the ballot through the mail may not be sufficient to enable  
10 return of the ballot by the time provided under sub. (6). An elector may receive an absentee  
11 ballot under this subsection only if the elector has filed a valid application for the ballot under  
12 sub. (1). If the clerk transmits an absentee ballot under this paragraph, the clerk shall also  
13 transmit a facsimile or electronic copy of the text of the material that appears on the certificate  
14 envelope prescribed in sub. (2), together with instructions prescribed by the board. The  
15 instructions shall require the absent elector to make and subscribe to the certification as

1 required under sub. (4) and to enclose the absentee ballot in a separate envelope contained  
2 within a larger envelope, that shall include the completed certificate. The elector shall then  
3 mail the absentee ballot ~~with postage prepaid~~ to the municipal clerk. Except as authorized in  
4 s. 6.97 (2), an absentee ballot received under this paragraph shall not be counted unless it is  
5 cast in the manner prescribed in this paragraph and in accordance with the instructions  
6 provided by the board.

7 **SECTION 8.** 6.87 (10) of the statutes is created to read:

8 6.87 (10) Regardless of whether an elector qualifies as an absent elector under s. 6.85,  
9 any qualified elector may apply for and cast a ballot in the municipal clerk's office. The  
10 municipal clerk shall allow an elector to cast a ballot under this section during regular business  
11 hours and at such other times as the clerk determines.

12 **SECTION 9.** 10.01 (2) (e) of the statutes is amended to read:

13 10.01 (2) (e) Type E—The type E notice shall state the qualifications for absentee  
14 voting, the procedures for obtaining an absentee ballot in the case of registered and  
15 unregistered voters, and the places and the deadlines for application and return of application,  
16 and the office hours during which an elector may cast an absentee ballot in the municipal  
17 clerk's office. The municipal clerk shall publish a type E notice on the 4th Tuesday preceding  
18 each spring primary and election, on the 4th Tuesday preceding each September primary and  
19 general election, on the 4th Tuesday preceding the primary for each special national, state,  
20 county or municipal election if any, on the 4th Tuesday preceding a special county or  
21 municipal referendum, and on the 3rd Tuesday preceding each special national, state, county  
22 or municipal election to fill an office which is not held concurrently with the spring or general  
23 election. The clerk of each special purpose district which calls a special election shall publish  
24 a type E notice on the 4th Tuesday preceding the primary for the special election, if any, on

1 the 4th Tuesday preceding a special referendum, and on the 3rd Tuesday preceding a special  
2 election for an office which is not held concurrently with the spring or general election except  
3 as authorized in s. 8.55 (3).

**NOTE:** This SECTION modifies the notice that a clerk must post to include  
the hours that an elector can cast an absentee ballot in the clerk's office.

4 **SECTION 10. Effective date.** This act takes effect on January 1, 2006.

5 (END)