



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 397
[2009 Senate Bill 435]

**Retention of Certain Election
Materials**

Current law provides that detachable recording units and compartments for use with electronic voting machines may be erased or cleared 14 days after any primary and 21 days after any other election. A municipal clerk, before erasing or clearing the units or compartments, must transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates.

In addition, current law provides that if there is a demand for a recount, notice of an election contest, or any litigation or contest pending with respect to an election, materials may be destroyed and recorders, units, or compartments may be erased or cleared only by order of the judge in whose court litigation is pending or, if no litigation is pending, by order of any circuit judge for the affected jurisdiction. The Governor may order the clearing of voting machine recorders on machines needed to conduct a special election, unless there is a demand for recount, notice of an election contest, or any litigation or contest pending, or a court of record orders that the recorders not be cleared.

2009 Wisconsin Act 397 provides that detachable recording units and compartments for use with *tabulating equipment for an electronic voting system* may be erased or cleared 14 days after any primary and 21 days after any other election. A municipal clerk, before erasing or clearing the units or compartments, must transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates. *The Act provides that the requirement to transfer data does not apply to units or compartments for use with tabulating equipment for an electronic voting system that was approved for use prior to January 1, 2009, and that is not used in a federal election.*

Further, the Act modifies the recount and litigation provisions under current law by providing that: (1) if a recount is pending or if the time allowed for filing a recount petition or an appeal or petition for review of any recount determination or decision at an election has not expired, no materials

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

may be destroyed until after the recount is completed and the applicable time period has expired; and (2) if there is litigation pending with respect to a recount, materials may be destroyed and recording units or compartments may be erased or cleared only by order of the court in which litigation is pending. The Act also removes the provision in current law that allows the Governor to order the clearing of voting machine recorders for special elections.

Effective date: Wisconsin Act 397 first applies with respect to elections held after the effective date of the Act. The Act takes effect on June 2, 2010.

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May 24, 2010

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