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LRB-3860/1 JTK:kjf:jf

2009 SENATE BILL 435

December 21, 2009 – Introduced by Committee on Labor, Elections and Urban Affairs, by request of Government Accountability Board. Referred to Committee on Labor, Elections and Urban Affairs.

1 AN ACT to repeal 7.23 (1) (b); to amend 7.23 (1) (f), 7.23 (1) (g), 7.23 (1) (h) and

7.23 (2); and *to create* 5.02 (4s) of the statutes; **relating to:** the period for 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 bill permits recording units and compartments for use with tabulating equipment for an electronic voting system at any election at which no federal office appears on the ballot to be cleared or erased no earlier than 14 days after the primary and 21 days after the election but not 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 bill also applies the same limitation concerning pending recounts, appeals, and appeal

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periods to other materials relating to a specific election, subject to a minimum 22-month retention requirement for a federal election.

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

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

5.02 (4s) "Federal election" means any election at which a national office appears on the ballot.

Section 2. 7.23 (1) (b) of the statutes is repealed.

Section 3. 7.23 (1) (f) of the statutes is amended to read:

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

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

7.23 (1) (g) Detachable recording units and compartments for use with tabulating equipment for an electronic voting machines system may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments for any federal election, a municipal clerk shall 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.

Section 5. 7.23 (1) (h) of the statutes is amended to read:

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

Section 6. 7.23 (2) of the statutes is amended to read:

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

SECTION 7. Initial applicability.

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

22 (END)