



## 2019 ASSEMBLY BILL 898

February 11, 2020 - Introduced by Representatives TUSLER and ALLEN. Referred to Committee on Campaigns and Elections.

1     **AN ACT** *to renumber and amend* 5.02 (20) and 8.50 (2) (b); *to amend* 6.85 (3),  
2           11.0101 (30) (intro.), 11.1401 (3) (a), 11.1401 (3) (b), 12.60 (1) (a), 12.60 (2) (a)  
3           and 12.60 (2) (b); and *to create* 5.02 (20) (b), 8.50 (2) (b) 3., 11.0101 (30) (c), 12.13  
4           (3) (mb) and 12.60 (1) (am) of the statutes; **relating to:** the time for holding  
5           special primaries, requiring those who register electronically or by mail to vote  
6           in person the first time they vote, obtaining another person's marked absentee  
7           ballot, tampering with voting machines or ballots, and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

#### **SPECIAL PRIMARIES**

Under current law, a vacancy in the office of U.S. senator or representative in congress occurring before the second Tuesday in April in the year of the general election must be filled at a special primary and special election. Current law provides that a special primary be held four weeks before the day of the special election. However, if the election is held on the same day as the spring election, the special primary is held concurrently with the spring primary.

Under current law, with regard to a special election for a national office, the period between a special primary and special election or between the spring primary or spring election does not provide sufficient time to canvass and certify the primary results and prepare ballots to send to overseas voters, in compliance with federal law.

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This bill requires that the special primary for a national office be held on the first Tuesday that is at least 10 weeks before the special election for that office. With regard to a special primary for other offices, the bill specifies that a special primary must be held on the first Tuesday that is at least four weeks before the special election.

**VOTING AFTER REGISTRATION**

Current law generally allows any individual who is eligible to vote to vote by absentee ballot. The bill modifies that provision so that an individual who registers to vote electronically or by mail must vote for the first time after such registration in person at the polling place or by in-person absentee ballot, unless the individual is entitled to vote otherwise than in person under federal law. For example, under the Uniformed and Overseas Citizens Absentee Voting Act, an overseas citizen is entitled to vote by absentee ballot. Federal law otherwise allows a state to require that an individual vote in person if the individual registered by mail or has not voted previously in the jurisdiction in which the individual has registered.

**BALLOT HARVESTING**

The bill prohibits a person from obtaining another person’s marked absentee ballot and failing or refusing to deliver it to the proper municipal clerk or polling place. A person who violates this prohibition is guilty of a Class H felony.

**TAMPERING**

Under current law, tampering with voting machines or equipment or with ballots or ballot boxes containing ballots cast in an election is punishable as a Class I felony, which consists of a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both.

Under the bill, such conduct is punishable as a Class H felony, which consists of a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

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

1           **SECTION 1.** 5.02 (20) of the statutes is renumbered 5.02 (20) (intro.) and  
2 amended to read:

3           5.02 (20) (intro.) “Special primary” means the primary held on the first  
4 Tuesday that is at least 4 weeks before the special election, except when as follows:

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1           (a) When the special election is held on the same day as the general election  
2 the special primary shall be held on the same day as the general primary or if the  
3 special election is held concurrently with the spring election, the primary shall be  
4 held concurrently with the spring primary.

5           **SECTION 2.** 5.02 (20) (b) of the statutes is created to read:

6           5.02 **(20)** (b) A special primary for a national office shall be held on the first  
7 Tuesday that is at least 10 weeks before the special election for that office.

8           **SECTION 3.** 6.85 (3) of the statutes is amended to read:

9           6.85 **(3)** An elector qualifying under this section may vote by absentee ballot  
10 under ss. 6.86 to 6.89, except that an individual who registers by mail under s. 6.30  
11 (4) or by electronic application under s. 6.30 (5) shall vote for the first time after such  
12 registration in person at the polling place or by in-person absentee ballot, as  
13 provided under s. 6.86 (1) (b), unless the elector is entitled to vote otherwise than in  
14 person under 28 USC 20505 (c) (2).

15           **SECTION 4.** 8.50 (2) (b) of the statutes is renumbered 8.50 (2) (b) (intro.) and  
16 amended to read:

17           8.50 **(2)** (b) (intro.) If a primary is required, the primary shall be on the day first  
18 Tuesday that is at least 4 weeks before the day of the special election, except when  
19 as follows:

20           1. When the special election is held on the same day as the general election the  
21 special primary shall be held on the same day as the partisan primary or if the special  
22 election is held concurrently with the spring election, the primary shall be held  
23 concurrently with the spring primary, ~~and except when.~~

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1           2. When the special election is held on the Tuesday after the first Monday in  
2 November of an odd-numbered year, the primary shall be held on the 2nd Tuesday  
3 of August in that year.

4           **SECTION 5.** 8.50 (2) (b) 3. of the statutes is created to read:

5           8.50 (2) (b) 3. A special primary for a national office shall be held on the first  
6 Tuesday that is at least 10 weeks before the special election for that office.

7           **SECTION 6.** 11.0101 (30) (intro.) of the statutes is amended to read:

8           11.0101 (30) (intro.) “Special primary” means the primary held on the first  
9 Tuesday that is 4 weeks before the special election, except as follows:

10          **SECTION 7.** 11.0101 (30) (c) of the statutes is created to read:

11          11.0101 (30) (c) A special primary for a national office shall be held on the first  
12 Tuesday that is at least 10 weeks before the special election for that office.

13          **SECTION 8.** 11.1401 (3) (a) of the statutes is amended to read:

14          11.1401 (3) (a) If a successful candidate for public office, other than a candidate  
15 for the legislature, is adjudged guilty in a criminal action of any violation of this  
16 chapter under sub. (1) (a) or (b), or of any violation of ch. 12 under s. 12.60 (1) (a) or  
17 (am) committed during his or her candidacy, the court shall after entering judgment  
18 enter a supplemental judgment declaring a forfeiture of the candidate’s right to  
19 office. The supplemental judgment shall be transmitted to the officer or agency  
20 authorized to issue the certificate of nomination or election to the office for which the  
21 person convicted is a candidate. If the candidate’s term has not yet begun, the  
22 candidate shall not take office. If the candidate’s term has begun, the office shall  
23 become vacant. The office shall then be filled in the manner provided by law.

24          **SECTION 9.** 11.1401 (3) (b) of the statutes is amended to read:

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1           11.1401 (3) (b) If a successful candidate for the legislature is adjudged guilty  
2           in a criminal action of any violation of this chapter under sub. (1) (a) or (b), or of any  
3           violation of ch. 12 under s. 12.60 (1) (a) or (am) committed during his or her candidacy,  
4           the court shall after entering judgment certify its findings to the presiding officer of  
5           the house of the legislature to which the candidate was elected.

6           **SECTION 10.** 12.13 (3) (mb) of the statutes is created to read:

7           12.13 (3) (mb) Obtain a marked absentee ballot from another person and fail  
8           or refuse to deliver it to the proper municipal clerk or polling place.

9           **SECTION 11.** 12.60 (1) (a) of the statutes is amended to read:

10          12.60 (1) (a) Whoever violates s. 12.09, 12.11, or 12.13 (1), (2) (b) 1. ~~to, 3., 4., 5.,~~  
11          ~~6m., or 7.,~~ or (3) (a), ~~(e), (f),~~ (j), (k), ~~(L), (m),~~ or (y) ~~or (z)~~ is guilty of a Class I felony.

12          **SECTION 12.** 12.60 (1) (am) of the statutes is created to read:

13          12.60 (1) (am) Whoever violates s. 12.13 (2) (b) 2. or 6. or (3) (e), (f), (L), (m),  
14          (mb), or (z) is guilty of a Class H felony.

15          **SECTION 13.** 12.60 (2) (a) of the statutes is amended to read:

16          12.60 (2) (a) If a successful candidate for public office, other than a candidate  
17          for the legislature or a candidate for national office, is adjudged guilty in a criminal  
18          action of any violation of this chapter under sub. (1) (a) or (am) committed during his  
19          or her candidacy, the court shall after entering judgment enter a supplemental  
20          judgment declaring a forfeiture of the candidate's right to office. The supplemental  
21          judgment shall be transmitted to the officer or agency authorized to issue the  
22          certificate of nomination or election to the office for which the person convicted is a  
23          candidate. If the candidate's term has begun, the office shall become vacant. The  
24          office shall then be filled in the manner provided by law.

25          **SECTION 14.** 12.60 (2) (b) of the statutes is amended to read:

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1           12.60 (2) (b) If a successful candidate for the legislature or U.S. congress is  
2      adjudged guilty in a criminal action of any violation of this chapter under sub. (1) (a)  
3      or (am) committed during his or her candidacy, the court shall after entering  
4      judgment certify its findings to the presiding officer of the legislative body to which  
5      the candidate was elected.

6                                      (END)