



2019 ASSEMBLY BILL 203

May 10, 2019 - Introduced by Representatives BRANDTJEN, L. MYERS, ALLEN, BROOKS, CONSIDINE, DITTRICH, DUCHOW, EDMING, FIELDS, HORLACHER, HUTTON, KNODL, KRUG, KUGLITSCH, KULP, MACCO, PRONSCHINSKE, QUINN, RAMTHUN, RIEMER, SINICKI, SKOWRONSKI, TITTL, WICHGERS and OHNSTAD, cosponsored by Senators CRAIG, L. TAYLOR, CARPENTER, JACQUE, JOHNSON, KAPENGA, KOOYENGA, LARSON, NASS, STROEBEL, WANGGAARD and WIRCH. Referred to Committee on Campaigns and Elections.

1 **AN ACT to repeal** 6.15 (6) and 6.21; **to renumber and amend** 5.84 (1); **to amend**
2 5.85 (2) (a), 6.84 (2), 6.86 (1) (ar), 6.88 (3) (b), 6.92 (1), 6.925, 6.94, 6.95, 7.50 (2)
3 (em) and 7.52 (3) (b); and **to create** 5.84 (1) (b), 6.91 and subchapter VI of
4 chapter 6 [precedes 6.981] of the statutes; **relating to:** using an electronic
5 voting machine to cast a vote with an in-person absentee ballot and providing
6 a penalty.

Analysis by the Legislative Reference Bureau

This bill authorizes a municipality to allow its electors to vote before election day by using an electronic voting machine to cast an in-person absentee ballot (the efficiency option). If a municipality adopts a resolution to implement this option, and the Elections Commission certifies that the municipality is capable of implementation, an elector may vote before election day at the municipal clerk's office by completing his or her ballot and casting the ballot using an electronic voting system. Using the efficiency option may occur simultaneously or in conjunction with making an application in person using absentee ballot envelopes, but the periods for voting using the efficiency option and for making an application in person by using absentee ballot envelopes need not be the same. The votes are not tabulated before election day, but the municipal clerk publishes the daily tally of the total number of ballots cast before election day on the municipality's Internet site. The bill requires the municipality to publish a notice specifying the locations, dates, and hours for

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voting using the efficiency option and the location where results will be tallied on election night. Under the bill, a person who acts in any manner that would give him or her the ability to know or to provide information on the accumulating or final results from the ballots cast using the efficiency option is guilty of a Class I felony. The current law that applies to voting on election day with regard to election observers, assisting electors, the availability of accessible systems, and the privilege of absentee voting also applies to voting as provided under the bill.

Under current law, an election inspector may challenge for cause any person offering to vote whom the inspector knows or suspects is not a qualified elector. Another elector may also make such a challenge for cause. When a voter's qualifications are challenged, the inspector must administer an oath to the challenged elector to affirm that he or she will fully and truly answer the inspector's questions regarding the person's residence and qualifications. The bill allows the chief clerk, the deputy clerk, or an inspector to challenge for cause any person offering to vote and to administer the oath and ask the relevant questions regarding the person's residence and qualifications.

The bill also repeals the current law provision regarding the treatment of absentee ballots cast by a person who dies before election day.

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.

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

1 **SECTION 1.** 5.84 (1) of the statutes is renumbered 5.84 (1) (a) and amended to
2 read:

3 5.84 (1) (a) Where Except as provided in par. (b), where any municipality
4 employs an electronic voting system which utilizes automatic tabulating equipment,
5 either at the polling place or at a central counting location, the municipal clerk shall,
6 on any day not more than 10 days prior to the election day on which the equipment
7 is to be utilized, have the equipment tested to ascertain that it will correctly count
8 the votes cast for all offices and on all measures. Public notice of the time and place
9 of the test shall be given by the clerk at least 48 hours prior to the test by publication
10 of a class 1 notice under ch. 985 in one or more newspapers published within the

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1 municipality if a newspaper is published therein, otherwise in a newspaper of
2 general circulation therein. The test shall be open to the public. The test shall be
3 conducted by processing a preaudited group of ballots so marked as to record a
4 predetermined number of valid votes for each candidate and on each referendum.
5 The test shall include for each office one or more ballots which have votes in excess
6 of the number allowed by law and, for a partisan primary election, one or more ballots
7 which have votes cast for candidates of more than one recognized political party, in
8 order to test the ability of the automatic tabulating equipment to reject such votes.
9 If any error is detected, the municipal clerk shall ascertain the cause and correct the
10 error. The clerk shall make an errorless count before the automatic tabulating
11 equipment is approved by the clerk for use in the election.

12 **SECTION 2.** 5.84 (1) (b) of the statutes is created to read:

13 5.84 (1) (b) For a municipality that authorizes the absentee voting efficiency
14 option under subch. VI of ch. 6, the municipal clerk shall have the automatic
15 tabulating equipment tested, as provided under par. (a), on any day not more than
16 10 days prior to the first day on which such voting is available in the municipality
17 pursuant to s. 6.981.

18 **SECTION 3.** 5.85 (2) (a) of the statutes is amended to read:

19 5.85 (2) (a) The Except when using a report function capable of reporting
20 write-in votes by scanning the ballots and electronically capturing the write-in
21 votes, the election officials shall examine the ballots or record of votes cast for
22 write-in votes and shall count and tabulate the write-in votes. The election officials
23 shall count write-in votes as provided in s. 7.50 (2) (d). When an electronic voting
24 system is used in which ballots are distributed to electors, before separating the
25 remaining ballots from their respective covering envelopes, the election officials

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1 shall examine the ballots for write-in votes. When an elector has cast a write-in
2 vote, the election officials shall compare the write-in vote with the votes on the ballot
3 to determine whether the write-in vote results in an overvote for any office. In case
4 of an overvote for any office, the election officials shall follow the procedure in par.
5 (b).

6 **SECTION 4.** 6.15 (6) of the statutes is repealed.

7 **SECTION 5.** 6.21 of the statutes is repealed.

8 **SECTION 6.** 6.84 (2) of the statutes is amended to read:

9 6.84 (2) INTERPRETATION. Notwithstanding s. 5.01 (1), with respect to matters
10 relating to the absentee ballot process, ss. 6.86, 6.87 (3) to (7) and 9.01 (1) (b) 2. and
11 4. and subch. VI shall be construed as mandatory. Ballots cast in contravention of
12 the procedures specified in those provisions may not be counted. Ballots counted in
13 contravention of the procedures specified in those provisions may not be included in
14 the certified result of any election.

15 **SECTION 7.** 6.86 (1) (ar) of the statutes is amended to read:

16 6.86 (1) (ar) Except as authorized in s. 6.875 (6), the municipal clerk shall not
17 issue an absentee ballot unless the clerk receives a written application therefor from
18 a qualified elector of the municipality. The clerk shall retain each absentee ballot
19 application until destruction is authorized under s. 7.23 (1). Except as authorized
20 in s. 6.79 (6) and (7), if a qualified elector applies for an absentee ballot in person at
21 the clerk's office, the clerk shall not issue the elector an absentee ballot unless the
22 elector states aloud his or her name and address and presents proof of identification.
23 The clerk shall verify that the name on the proof of identification presented by the
24 elector conforms to the name on the elector's application and shall verify that any
25 photograph appearing on that document reasonably resembles the elector. The clerk

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1 shall then enter his or her initials on the certificate envelope indicating that the
2 absentee elector presented proof of identification to the clerk.

3 **SECTION 8.** 6.88 (3) (b) of the statutes is amended to read:

4 6.88 (3) (b) When the inspectors find that a certification is insufficient, that the
5 applicant is not a qualified elector in the ward or election district, that the ballot
6 envelope is open or has been opened and resealed, that the ballot envelope contains
7 more than one ballot of any one kind or, except in municipalities where absentee
8 ballots are canvassed under s. 7.52, that the certificate of a military or overseas
9 elector who received an absentee ballot by facsimile transmission or electronic mail
10 is missing, or if proof is submitted to the inspectors that an elector voting an absentee
11 ballot has since died, the inspectors shall not count the ballot. The inspectors shall
12 endorse every ballot not counted on the back, “rejected (giving the reason)”. The
13 inspectors shall reinsert each rejected ballot into the certificate envelope in which
14 it was delivered and enclose the certificate envelopes and ballots, and securely seal
15 the ballots and envelopes in an envelope marked for rejected absentee ballots. The
16 inspectors shall endorse the envelope, “rejected ballots” with a statement of the ward
17 or election district and date of the election, signed by the chief inspector and one of
18 the inspectors representing each of the 2 major political parties and returned to the
19 municipal clerk in the same manner as official ballots voted at the election.

20 **SECTION 9.** 6.91 of the statutes is created to read:

21 **6.91 Place for challenging an elector.** The vote of any voter, including an
22 absent voter, may be challenged as provided under this subchapter at the polling
23 place, at the municipal clerk’s office, at an in-person absentee voting location during
24 the period for making an in-person application for an absentee ballot under s. 6.86

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1 (1) (b), at the municipal clerk's office during the period for using the voting procedure
2 under s. 6.981, or at a central count location.

3 **SECTION 10.** 6.92 (1) of the statutes is amended to read:

4 6.92 (1) Except as provided in sub. (2), each the clerk or deputy clerk or an
5 inspector shall challenge for cause any person offering to vote whom the clerk, deputy
6 clerk, or inspector knows or suspects is not a qualified elector or who does not adhere
7 to any voting requirement under this chapter. If a person is challenged as
8 unqualified by the clerk or deputy clerk or an inspector, one of the inspectors the clerk
9 or deputy clerk or an inspector shall administer the following oath or affirmation to
10 the person: "You do solemnly swear (or affirm) that you will fully and truly answer
11 all questions put to you regarding your place of residence and qualifications as an
12 elector of this election"; and shall then ask questions which are appropriate as
13 determined by the commission, by rule, to test the person's qualifications.

14 **SECTION 11.** 6.925 of the statutes is amended to read:

15 **6.925 Elector making challenge in person.** Any elector may challenge for
16 cause any person offering to vote whom the elector knows or suspects is not a
17 qualified elector. If a person is challenged as unqualified by an elector, ~~one of the~~
18 ~~inspectors~~ the clerk or deputy clerk or an inspector may administer the oath or
19 affirmation to the challenged elector under s. 6.92 and ask the challenged elector the
20 questions under that section which are appropriate to test the elector's
21 qualifications. In addition, ~~one of the inspectors~~ the clerk or deputy clerk or an
22 inspector shall administer the following oath or affirmation to the challenging
23 elector: "You do solemnly swear (or affirm) that you will fully and truly answer all
24 questions put to you regarding the challenged person's place of residence and
25 qualifications as an elector of this election"; and shall then ask questions which are

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1 appropriate as determined by the commission, by rule, to test the qualifications of
2 the challenged elector.

3 **SECTION 12.** 6.94 of the statutes is amended to read:

4 **6.94 Challenged elector oath.** If the person challenged refuses to answer
5 fully any relevant questions put to him or her by the clerk, deputy clerk, or inspector
6 under s. 6.92, the clerk, deputy clerk, or inspectors shall reject the elector's vote. If
7 the challenge is not withdrawn after the person offering to vote has answered the
8 questions, ~~one of the inspectors~~ the clerk or deputy clerk or an inspector shall
9 administer to the person the following oath or affirmation: "You do solemnly swear
10 (or affirm) that: you are 18 years of age; you are a citizen of the United States; you
11 are now and for 28 consecutive days have been a resident of this ward except under
12 s. 6.02 (2); you have not voted at this election; you have not made any bet or wager
13 or become directly or indirectly interested in any bet or wager depending upon the
14 result of this election; you are not on any other ground disqualified to vote at this
15 election". If the person challenged refuses to take the oath or affirmation, the
16 person's vote shall be rejected. If the person challenged answers fully all relevant
17 questions put to the elector by the clerk, deputy clerk, or inspector under s. 6.92,
18 takes the oath or affirmation, and fulfills the applicable registration requirements,
19 and if the answers to the questions given by the person indicate that the person meets
20 the voting qualification requirements, the person's vote shall be received.

21 **SECTION 13.** 6.95 of the statutes is amended to read:

22 **6.95 Voting procedure for challenged electors.** Whenever the clerk,
23 deputy clerk, or inspectors under ss. 6.92 to 6.94 receive the vote of a person offering
24 to vote who has been challenged, the clerk, deputy clerk, or inspectors shall, before
25 giving the elector a ballot, write on the back of the ballot the serial number of the

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1 challenged person corresponding to the number kept at the election on the poll list,
2 or other list maintained under s. 6.79, and the notation “s. 6.95”. If voting machines
3 are used in the municipality where the person is voting, the person’s vote may be
4 received only upon an absentee ballot furnished by the municipal clerk which shall
5 have the corresponding serial number from the poll list or other list maintained
6 under s. 6.79 and the notation “s. 6.95” written on the back of the ballot by the clerk,
7 deputy clerk, or inspectors before the ballot is given to the elector. The clerk, deputy
8 clerk, or inspectors shall indicate on the list the reason for the challenge. The clerk,
9 deputy clerk, or inspectors shall then deposit the ballot. The challenged ballots shall
10 be counted under s. 5.85 or 7.51. The municipal board of canvassers may decide any
11 challenge when making its canvass under s. 7.53. If the returns are reported under
12 s. 7.60, a challenge may be reviewed by the county board of canvassers. If the returns
13 are reported under s. 7.70, a challenge may be reviewed by the chairperson of the
14 commission or the chairperson’s designee. The decision of any board of canvassers
15 or of the chairperson or chairperson’s designee may be appealed under s. 9.01. The
16 standard for disqualification specified in s. 6.325 shall be used to determine the
17 validity of challenged ballots.

18 **SECTION 14.** Subchapter VI of chapter 6 [precedes 6.981] of the statutes is
19 created to read:

CHAPTER 6**SUBCHAPTER VI****ABSENTEE VOTING****EFFICIENCY OPTION**

24 **6.981 Efficiency option.** (1) (a) The municipal clerk shall complete the
25 application as provided under s. 6.87 (1) and allow an elector to cast a ballot prior to

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1 election day by casting a ballot into an electronic voting system as provided under
2 s. 6.80 at the municipal clerk's office, if the governing body of the municipality has
3 adopted a resolution to allow such voting and the commission has certified the
4 municipality under s. 6.982 (8) (a) to conduct such voting. An elector may vote under
5 this subchapter during the time prescribed for an application made in person
6 pursuant to s. 6.86 (1) (b), but only after the municipality has completed a successful
7 public test of the programmed media necessary to vote under this subchapter and the
8 test occurs no more than 10 days prior to the use of the media for voting under this
9 subchapter. A municipality shall specify the locations, dates, and hours for voting
10 and the location where results will be tallied on election night in the notice under s.
11 10.01 (2) (e). The municipal clerk, or his or her designee, shall send the notice to the
12 2 major political parties, as defined in s. 13.46 (5), at the state level and, if applicable,
13 at the county and local levels, on the same date as the notice is posted for the general
14 public.

15 (b) After the governing body of the municipality has adopted a resolution to
16 allow the voting procedure under par. (a), the municipality shall use that procedure
17 for all elections specified in the resolution. The municipal clerk or deputy municipal
18 clerk shall supervise the voting procedure under par. (a).

19 (c) This subchapter does not preclude the clerk from using absentee envelopes
20 when the clerk or the elector determines that such use is necessary. Voting as
21 provided under this subchapter may occur simultaneously or in conjunction with
22 making an application in person using absentee envelopes, but the periods for voting
23 as provided under this subchapter and for making an application in person using
24 absentee envelopes need not be the same.

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1 **6.982 Administration. (1)** (a) Votes cast under s. 6.981 may not be tabulated
2 until the closing of the polls on election day, but the municipal clerk shall publish on
3 the municipality's Internet site a daily tally of the total number of ballots cast under
4 s. 6.981 in the municipality.

5 (b) No person may act in any manner that would give him or her the ability to
6 know or to provide information on the accumulating or final results from the ballots
7 cast under s. 6.981 before the close of the polls on election day. A person who violates
8 this paragraph is guilty of a Class I felony.

9 (c) An elector who casts a ballot under s. 6.981 that is accepted by automatic
10 tabulating equipment may not request that the ballot be returned to him or her as
11 defective in order to cast a new ballot, as provided under s. 6.80 (2) (c).

12 (d) The clerk or deputy clerk shall reconcile the ballots cast each day to ensure
13 that the number of ballots cast equals the number issued. The reconciliation may
14 include performing checks that do not involve examining the ballots cast, including
15 checking data entry and verifying mathematical computations. If the clerk or deputy
16 clerk is unable to reconcile the ballots, the incident log shall include the date and any
17 other information necessary to clearly identify the reconciliation issue. The
18 municipality shall post the daily reconciliation incident report on the municipality's
19 Internet site at the close of each day during the period for voting under this
20 subchapter. If the clerk or deputy clerk is unable to reconcile the ballots, the clerk
21 or deputy clerk shall deliver all ballot bags of unreconciled ballots, along with the
22 daily reconciliation incident reports, to the appropriate board of canvassers as
23 provided under s. 7.53 and the board of canvassers shall complete the reconciliation
24 using the methods provided under s. 7.51.

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1 **(2)** At all times when the process for voting under this subchapter is in use the
2 municipality shall have at least 2 individuals present, not including a candidate on
3 the ballot and not including an elector who is present only to vote. The tabulation
4 equipment shall be in a location that is visible to the clerk or the clerk's designee and
5 to at least one other person. Automatic tabulating equipment used for purposes of
6 this subchapter shall be secured with a tamper-evident security seal and the clerk
7 or the clerk's designee, in the presence of at least one witness, shall check the seals
8 for tampering at the beginning and ending of each day designated for voting under
9 s. 6.981. The areas where the programmed media and the ballots cast are housed
10 shall be secured with tamper-evident security seals. At least 2 persons shall be
11 present for any administrative process that requires access to a sealed area and the
12 breaking of a tamper-evident security seal, including clearing a jammed ballot or
13 emptying a full ballot bin. The clerk or clerk's designee shall daily document all
14 checks and record any such activity and reason in which a seal is broken and replaced
15 under this subsection. The clerk or clerk's designee shall obtain the signature of any
16 witness who was present when any such activity is performed. When not in use the
17 tabulation equipment and the cast ballots sealed inside tamper-evident security
18 seal ballot bags shall be secured in a double-lock location such as a locked cabinet
19 inside a locked office.

20 **(3)** For purposes of s. 6.981, the municipal clerk or the clerk's designee shall
21 issue ballots using the voter registration and voter information systems established
22 and maintained by the elections commission in the same manner that the systems
23 are used to issue and track absentee ballots.

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1 (4) An elector requesting to cast a ballot under s. 6.981 shall state aloud his or
2 her name and address. The elector shall sign an absentee ballot certification request
3 log for purposes of this subchapter.

4 (5) (a) Except as provided in par. (b), the municipal clerk shall seal together all
5 ballots cast in the municipality under s. 6.981 each day in a numbered and
6 tamper-evident security seal ballot bag and document all such action and numbers.
7 All such ballot bags shall remain in the clerk's possession, sealed and secured by the
8 municipal clerk, until such time that they are needed at a central count location or
9 for audit, review at the polling place, recount, or storage.

10 (b) If the municipal clerk is required to report vote totals by ward, but the votes
11 in multiple wards are processed through a single memory device and tabulator, the
12 clerk shall not sort the ballots into wards before placing them into the bag described
13 under par. (a).

14 (6) Section 7.41, regarding the public's right to access the polling place; s. 6.82,
15 regarding assisting electors; s. 5.25 (4) (a), regarding the availability of accessible
16 systems; and s. 6.84 (1), regarding the privilege of absentee voting, apply to voting
17 conducted under s. 6.981. The municipal clerk shall post at a conspicuous space near
18 the tabulation equipment a notice, in 18 point type, warning the elector voting as
19 provided under this subchapter that a ballot cast and accepted by the tabulation
20 equipment may not be retrieved in order to spoil the ballot under s. 6.86 (5).

21 (8) (a) The commission shall establish procedures for certifying municipalities
22 to conduct voting under s. 6.981. The governing body of a municipality wishing to
23 obtain certification under this paragraph shall send a plan for administering the
24 process under this subchapter to the commission for review no later than 60 days
25 prior to the first day on which the municipality would conduct voting under s. 6.981.

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1 The commission shall review the plan and give notice of approval or of changes
2 needed to receive approval no later than 20 days after receiving the plan. The
3 commission may send notice to the municipality by electronic mail. The commission
4 shall certify a municipality to conduct voting under s. 6.981 if it determines that the
5 municipality satisfies all of the following:

6 1. Its governing body has approved the use of voting under this subchapter, as
7 provided under s. 6.981 (1) (a).

8 2. It is using equipment capable of capturing a digital image of both the front
9 and back of the ballot.

10 4. It has Internet access at each location where voting will be conducted under
11 this subchapter so that an absentee ballot may be issued to an elector using the
12 statewide voter registration system immediately prior to the elector casting his or
13 her ballot and so that the clerk or clerk's designee may add new or changed
14 registration information prior to issuing an absentee ballot.

15 5. It is able to update its Internet site at the end of each day.

16 6. It is capable of adequately securing all equipment and ballots in a
17 double-lock location.

18 7. Its plan for administering the process under this subchapter satisfies all
19 other requirements set forth in this subchapter.

20 (b) The commission shall establish procedures for the administration of this
21 subchapter, including procedures to facilitate the secure transfer of memory devices
22 from their use for voting under s. 6.981 to their use in tabulating the votes on election
23 day.

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1 (c) A municipality certified by the commission to conduct voting under s. 6.981
2 shall notify the county where the municipality is located at least 70 days before each
3 election at which the municipality is using the option under s. 6.981.

4 **SECTION 15.** 7.50 (2) (em) of the statutes is amended to read:

5 7.50 (2) (em) Except as otherwise provided in this paragraph, write-in votes
6 shall only be counted if no candidates have been certified to appear on the ballot. If
7 a candidate has been certified to appear on the ballot, write-in votes may only be
8 counted for a candidate that files a registration statement under s. 11.0202 (1) (a) no
9 later than noon on the Friday immediately preceding the election. If a candidate
10 certified to appear on the ballot dies or withdraws before the election, all write-in
11 votes shall be counted. When write-in votes are counted, every vote shall be counted
12 for the candidate for whom it was intended, if the elector's intent can be ascertained
13 from the ballot itself, the write-in section of the results tape, or the write-in report.

14 **SECTION 16.** 7.52 (3) (b) of the statutes is amended to read:

15 7.52 (3) (b) When the board of absentee ballot canvassers finds that a
16 certification is insufficient, that the applicant is not a qualified elector in the ward
17 or election district, that the ballot envelope is open or has been opened and resealed,
18 that the ballot envelope contains more than one ballot of any one kind, or that the
19 certificate of a military or overseas elector who received an absentee ballot by
20 facsimile transmission or electronic mail is missing, ~~or if proof is submitted to the~~
21 ~~board of absentee ballot canvassers that an elector voting an absentee ballot has~~
22 ~~since died,~~ the board of absentee ballot canvassers shall not count the ballot. Each
23 member of the board of absentee ballot canvassers shall endorse every ballot not
24 counted on the back as "rejected (giving the reason)." The board of absentee ballot
25 canvassers shall reinsert each rejected ballot into the certificate envelope in which

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1 it was delivered and enclose the certificate envelopes and ballots, and securely seal
2 the ballots and envelopes in an envelope marked for rejected absentee ballots. The
3 board of absentee ballot canvassers shall endorse the envelope as “rejected ballots,”
4 with a statement of the ward or election district and date of the election, and each
5 member of the board of absentee ballot canvassers shall sign the statement. The
6 board of absentee ballot canvassers shall then return the envelope containing the
7 ballots to the municipal clerk.

8

(END)