



2019 SENATE BILL 917

March 26, 2020 - Introduced by Senators LARSON, SMITH and CARPENTER, cosponsored by Representative BROSTOFF. Referred to Committee on Elections, Ethics and Rural Issues.

1 **AN ACT to amend** 5.84 (1), 6.15 (4) (b), 6.86 (1) (b), 6.87 (6), 6.88 (1) and 7.52 (1)
2 (a); and **to create** 6.885 and 6.91 of the statutes; **relating to:** canvassing
3 absentee ballots during a state of emergency on the Sunday before an election
4 and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, absentee ballots may not be canvassed until election day. This bill authorizes a municipality to adopt an ordinance providing for the canvassing of absentee ballots during a state of emergency on the Sunday before an election, subject to the following requirements:

1. The municipality must use automatic tabulating equipment to process absentee ballots.

2. Prior to enacting an ordinance under the bill, the municipal clerk or municipal board of election commissioners must notify the Elections Commission in writing of the proposed enactment and must consult with the Elections Commission concerning administration of early canvassing of absentee ballots.

3. Early canvassing of absentee ballots under the bill must satisfy the procedures required under current law for canvassing absentee ballots on election day.

4. Members of the public must have the same right of access to a place where absentee ballots are being canvassed early as is provided under current law for canvassing absentee ballots on election day.

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5. When not in use, automatic tabulating equipment used for canvassing absentee ballots and the areas where the programmed media and the absentee ballots are housed must be secured with tamper-evident security seals in a double-lock location such as a locked cabinet inside a locked office.

6. Ballots canvassed early under the bill may not actually be tabulated until the closing of the polls on election day.

7. Subject to criminal penalty, no person may act 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 canvassed early under the bill before the close of the polls on election day.

8. Certain notices must be provided before each election at which the municipality intends to canvass absentee ballots on the Sunday before election day.

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 amended to read:

2 5.84 (1) Where any municipality employs an electronic voting system which
3 utilizes automatic tabulating equipment, ~~either at the polling place or at a central~~
4 ~~counting location,~~ the municipal clerk shall, on any day not more than 10 days prior
5 to the election day on which the equipment is to be utilized, have the equipment
6 tested to ascertain that it will correctly count the votes cast for all offices and on all
7 measures. Public notice of the time and place of the test shall be given by the clerk
8 at least 48 hours prior to the test by publication of a class 1 notice under ch. 985 in
9 one or more newspapers published within the municipality if a newspaper is
10 published therein, otherwise in a newspaper of general circulation therein. The test
11 shall be open to the public. The test shall be conducted by processing a preaudited
12 group of ballots so marked as to record a predetermined number of valid votes for
13 each candidate and on each referendum. The test shall include for each office one
14 or more ballots which have votes in excess of the number allowed by law and, for a

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1 partisan primary election, one or more ballots which have votes cast for candidates
2 of more than one recognized political party, in order to test the ability of the
3 automatic tabulating equipment to reject such votes. If any error is detected, the
4 municipal clerk shall ascertain the cause and correct the error. The clerk shall make
5 an errorless count before the automatic tabulating equipment is approved by the
6 clerk for use in the election.

7 **SECTION 2.** 6.15 (4) (b) of the statutes is amended to read:

8 6.15 (4) (b) During polling hours, or on the Sunday before the election if
9 authorized under s. 6.885, the inspectors shall open each carrier envelope, announce
10 the elector's name, check the affidavit for proper execution, and check the voting
11 qualifications for the ward, if any. In municipalities where absentee ballots are
12 canvassed under s. 7.52, the municipal board of absentee ballot canvassers shall
13 perform this function at a meeting of the board of absentee ballot canvassers.

14 **SECTION 3.** 6.86 (1) (b) of the statutes is amended to read:

15 6.86 (1) (b) Except as provided in this section, if application is made by mail,
16 the application shall be received no later than 5 p.m. on the 5th day immediately
17 preceding the election. If application is made in person, the application shall be
18 made no earlier than 14 days preceding the election and no later than the Sunday
19 preceding the election. No application may be received on a legal holiday. A
20 municipality shall specify the hours in the notice under s. 10.01 (2) (e). The
21 municipal clerk or an election official shall witness the certificate for any in-person
22 absentee ballot cast. Except as provided in par. (c), if the elector is making written
23 application for an absentee ballot at the partisan primary, the general election, the
24 presidential preference primary, or a special election for national office, and the
25 application indicates that the elector is a military elector, as defined in s. 6.34 (1), the

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1 application shall be received by the municipal clerk no later than 5 p.m. on election
2 day. If the application indicates that the reason for requesting an absentee ballot is
3 that the elector is a sequestered juror, the application shall be received no later than
4 5 p.m. on election day. If the application is received after 5 p.m. on the Friday
5 immediately preceding the election, the municipal clerk or the clerk's agent shall
6 immediately take the ballot to the court in which the elector is serving as a juror and
7 deposit it with the judge. The judge shall recess court, as soon as convenient, and
8 give the elector the ballot. The judge shall then witness the voting procedure as
9 provided in s. 6.87 and shall deliver the ballot to the clerk or agent of the clerk who
10 shall deliver it to the ~~polling place~~ election inspectors of the proper ward or election
11 district or, in municipalities where absentee ballots are canvassed under s. 7.52, to
12 the municipal clerk as required in s. 6.88. If application is made under sub. (2) or
13 (2m), the application may be received no later than 5 p.m. on the Friday immediately
14 preceding the election.

15 **SECTION 4.** 6.87 (6) of the statutes is amended to read:

16 6.87 (6) The ballot shall be returned so it is delivered to the ~~polling place~~
17 election inspectors of the proper ward or election district no later than 8 p.m. on
18 election day. Except in municipalities where absentee ballots are canvassed under
19 s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk
20 shall secure the ballot and cause the ballot to be delivered to the polling place serving
21 the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided
22 in this subsection may not be counted.

23 **SECTION 5.** 6.88 (1) of the statutes is amended to read:

24 6.88 (1) When an absentee ballot arrives at the office of the municipal clerk,
25 or at an alternate site under s. 6.855, if applicable, the clerk shall enclose it,

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1 unopened, in a carrier envelope which shall be securely sealed and endorsed with the
2 name and official title of the clerk, and the words “This envelope contains the ballot
3 of an absent elector and must be opened in the same room where votes are being cast
4 at the polls during polling hours on election day or, in municipalities where absentee
5 ballots are canvassed under s. 7.52, stats., at a meeting of the municipal board of
6 absentee ballot canvassers under s. 7.52, stats only as provided by law.” If the elector
7 is a military elector, as defined in s. 6.34 (1), or an overseas elector, regardless of
8 whether the elector qualifies as a resident of this state under s. 6.10, and the ballot
9 was received by the elector by facsimile transmission or electronic mail and is
10 accompanied by a separate certificate, the clerk shall enclose the ballot in a
11 certificate envelope and securely append the completed certificate to the outside of
12 the envelope before enclosing the ballot in the carrier envelope. The clerk shall keep
13 the ballot in the clerk’s office or at the alternate site, if applicable until delivered, as
14 required in sub. (2).

15 **SECTION 6.** 6.885 of the statutes is created to read:

16 **6.885 Early canvassing of absentee ballots during a state of emergency.**

17 **(1) ORDINANCE AUTHORIZING EARLY CANVASSING; REQUIREMENTS.** (a) 1. The governing
18 body of any municipality that uses automatic tabulating equipment to process
19 absentee ballots may provide by ordinance that absentee ballots received by the
20 municipal clerk may be canvassed on the Sunday before any election occurring no
21 later than 90 days after the governor issues an executive order declaring a state of
22 emergency under s. 323.10.

23 2. Prior to enacting an ordinance under subd. 1., the municipal clerk or
24 municipal board of election commissioners shall notify the elections commission in

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1 writing of the proposed enactment and shall consult with the elections commission
2 concerning administration of this section.

3 (b) Early canvassing of absentee ballots under this section shall satisfy the
4 procedures required for canvassing absentee ballots during polling hours at a polling
5 place under s. 6.88 (3) or, if applicable, 7.52.

6 (c) Any member of the public has the same right of access to a place where
7 absentee ballots are being canvassed early under this section that the individual
8 would have under s. 7.41 to observe the proceedings at a polling place.

9 (d) When not in use, automatic tabulating equipment used for purposes of this
10 section and the areas where the programmed media and the absentee ballots are
11 housed shall be secured with tamper-evident security seals in a double-lock location
12 such as a locked cabinet inside a locked office.

13 (e) Ballots canvassed early under this section may not be tabulated until the
14 closing of the polls on election day.

15 (f) No person may act in any manner that would give him or her the ability to
16 know or to provide information on the accumulating or final results from the ballots
17 canvassed early under this section before the close of the polls on election day. A
18 person who violates this paragraph is guilty of a Class I felony.

19 **(2) NOTICE REQUIREMENTS.** Absentee ballots may not be canvassed early under
20 this section for any election unless all of the following apply:

21 (a) As soon as practicable before the election the municipal clerk or executive
22 director of the municipal board of election commissioners notifies in writing the
23 county clerk or executive director of the county board of election commissioners that
24 early canvassing of absentee ballots will take place in the election.

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1 (b) The notice under s. 10.01 (2) (e) specifies the date and time during which,
2 and each location where, the early canvassing of absentee ballots will be conducted.

3 **SECTION 7.** 6.91 of the statutes is created to read:

4 **6.91 Place for challenging an elector.** The vote of any voter, including an
5 absent voter, may be challenged as provided under this subchapter at the polling
6 place, at the municipal clerk's office, at an in-person absentee voting location during
7 the period for making an in-person application for an absentee ballot under s. 6.86
8 (1) (b), at a location where the early canvassing of absentee ballots is being conducted
9 under s. 6.885, or at a central count location.

10 **SECTION 8.** 7.52 (1) (a) of the statutes is amended to read:

11 7.52 (1) (a) The governing body of any municipality may provide by ordinance
12 that, in lieu of canvassing absentee ballots at polling places under s. 6.88, the
13 municipal board of absentee ballot canvassers designated under s. 7.53 (2m) shall,
14 at each election held in the municipality, canvass all absentee ballots received by the
15 municipal clerk by 8 p.m. on election day. Prior to enacting an ordinance under this
16 subsection, the municipal clerk or board of election commissioners of the
17 municipality shall notify the elections commission in writing of the proposed
18 enactment and shall consult with the elections commission concerning
19 administration of this section. At every election held in the municipality following
20 enactment of an ordinance under this subsection, the board of absentee ballot
21 canvassers shall, any time after the opening of the polls, or on the Sunday before the
22 election if authorized under s. 6.885, and before 10 p.m. on election day, publicly
23 convene to count the absentee ballots for the municipality. The municipal clerk shall
24 give at least 48 hours' notice of any meeting under this subsection. Any member of
25 the public has the same right of access to a meeting of the municipal board of

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1 absentee ballot canvassers under this subsection that the individual would have
2 under s. 7.41 to observe the proceedings at a polling place. The board of absentee
3 ballot canvassers may order the removal of any individual exercising the right to
4 observe the proceedings if the individual disrupts the meeting.

5

(END)