

2019 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB(LRBx2970/2))

For: **Devin LeMahieu (608) 266-2056** Drafter: **mgallagh**
 By: **Erin** Secondary Drafters:
 Date: **10/17/2019** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Sen.LeMahieu@legis.wisconsin.gov**
 Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**
joseph.kreye@legis.wisconsin.gov
katie.bender-olson@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Processing absentee ballots

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mgallagh 10/17/2019	ccarmich 10/17/2019			
/P1	mgallagh 11/26/2019	ccarmich 11/26/2019	mbarman 10/17/2019		
/P2	mgallagh 11/26/2019	ccarmich 11/26/2019	dwalker 11/26/2019		Crime
/P3	mgallagh 12/12/2019	ccarmich 12/12/2019	jmurphy 11/26/2019		Crime

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P4			lparisi 12/12/2019		Crime
/1			dwalker 1/6/2020	dwalker 1/6/2020	Crime

FE Sent For:

<END>



MP5

10/16

- Substitute Amendment for -2970/2
- "Business Day" instead of Monday ✓
- "unless otherwise provided in the ordinance, Clerk's Discretion." ✓
- Clarify how central count is treated. ✓
- ~~2020~~ First Applies to August 2020 ✓
- Move to ch. 7.



State of Wisconsin
2019 - 2020 LEGISLATURE

10/17 Today Trades?

LRB-2970/2
MPG/cdc&kjt

SSA to SB

2019 BILL

SO/ZZ/P1

last business day

J-SK

IMSOA

Regen.

- 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 on the Monday before an election 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 on the Monday 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.
- 5. When not in use, automatic tabulating equipment used for canvassing absentee ballots and the areas where the programmed media and the absentee

last business day

BILL

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 Monday 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
15 partisan primary election, one or more ballots which have votes cast for candidates

election, except as otherwise provided in the ordinance

Under the bill, if a municipality passes an ordinance authorizing the early canvassing of absentee ballots, the municipal clerk or municipal board of election commissioners may elect to provide for the test.

BILL

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

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

7 6.15 (4) (b) During polling hours, or on the Monday before the election if
8 authorized under s. 6.885, the inspectors shall open each carrier envelope, announce
9 the elector's name, check the affidavit for proper execution, and check the voting
10 qualifications for the ward, if any. In municipalities where absentee ballots are
11 canvassed under s. 7.52, the municipal board of absentee ballot canvassers shall
12 perform this function at a meeting of the board of absentee ballot canvassers.

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

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

Insert 3-5

last business day

7.525

or elected for that election

BILL

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

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

15 6.87 (6) The ballot shall be returned so it is delivered to the ~~polling place~~
16 election inspectors of the proper ward or election district no later than 8 p.m. on
17 election day. Except in municipalities where absentee ballots are canvassed under
18 s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk
19 shall secure the ballot and cause the ballot to be delivered to the polling place serving
20 the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided
21 in this subsection may not be counted.

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

23 6.88 (1) When an absentee ballot arrives at the office of the municipal clerk,
24 or at an alternate site under s. 6.855, if applicable, the clerk shall enclose it,
25 unopened, in a carrier envelope which shall be securely sealed and endorsed with the

BILL

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

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

7.525

15 **6.885 Early canvassing of absentee ballots.** (1) ORDINANCE AUTHORIZING
 16 EARLY CANVASSING; REQUIREMENTS. (a) 1. The governing body of any municipality that
 17 uses automatic tabulating equipment to process absentee ballots may provide by
 18 ordinance that absentee ballots received by the municipal clerk may be canvassed
 19 on the Monday before the election.

20 (a) (2) Prior to enacting an ordinance under subd. 1., the municipal clerk or
 21 municipal board of election commissioners shall notify the elections commission in
 22 writing of the proposed enactment and shall consult with the elections commission
 23 concerning administration of this section.

Move
to page
8, line 2

begin being

last business day

Unless the ordinance provides otherwise, the municipal clerk or municipal board of election commissioners may elect to canvass ballots early under this section in any election

BILL

MOVE TO PAGE 8, LINE 2 (CONT.)

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

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

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

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

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

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

19 (a) At least 70 days before the election the municipal clerk or executive director
20 of the municipal board of election commissioners notifies in writing the county clerk
21 or executive director of the county board of election commissioners that early
22 canvassing of absentee ballots will take place in the election.

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

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

BILL

1 **6.91 Place for challenging an elector.** The vote of any voter, including an
 2 absent voter, may be challenged as provided under this subchapter at the polling
 3 place, at the municipal clerk's office, at an in-person absentee voting location during
 4 the period for making an in-person application for an absentee ballot under s. 6.86
 5 (1) (b), at a location where the early canvassing of absentee ballots is being conducted
 6 under s. 6.885, or at a central count location. 7.525

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

8 7.52 (1) (a) The governing body of any municipality may provide by ordinance
 9 that, in lieu of canvassing absentee ballots at polling places under s. 6.88, the
 10 municipal board of absentee ballot canvassers designated under s. 7.53 (2m) shall,
 11 at each election held in the municipality, canvass all absentee ballots received by the
 12 municipal clerk by 8 p.m. on election day. Prior to enacting an ordinance under this
 13 subsection, the municipal clerk or board of election commissioners of the
 14 municipality shall notify the elections commission in writing of the proposed
 15 enactment and shall consult with the elections commission concerning
 16 administration of this section. At every election held in the municipality following
 17 enactment of an ordinance under this subsection, the board of absentee ballot
 18 canvassers shall, any time after the opening of the polls, or on the Monday before the
 19 election if authorized under s. 6.885, and before 10 p.m. on election day, publicly
 20 convene to count the absentee ballots for the municipality. 7.525 The municipal clerk shall
 21 give at least 48 hours' notice of any meeting under this subsection. Any member of
 22 the public has the same right of access to a meeting of the municipal board of
 23 absentee ballot canvassers under this subsection that the individual would have
 24 under s. 7.41 to observe the proceedings at a polling place. The board of absentee

last business day

or elected for that election

BILL

SECTION 8

Insert material from page 5

1 ballot canvassers may order the removal of any individual exercising the right to
2 observe the proceedings if the individual disrupts the meeting.

3 (END)

Insert 2-2

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0132/plins
MPG:...

INSERT 3-5

1 **SECTION 1.** 5.86 (1) of the statutes is amended to read:

2 5.86 (1) All proceedings at each central counting location shall be under the
3 direction of the municipal clerk or an election official designated by the clerk unless
4 the central counting location is at the county seat ~~and the municipal clerk delegates~~
5 ~~the responsibility to supervise the location to the county clerk~~, in which case the
6 proceedings shall be under the direction of the county clerk or an election official
7 designated by the county clerk. If for any municipality the central counting location
8 is at the county seat and the municipality authorizes or elects the early canvassing
9 of absentee ballots under s. 7.525, the county clerk or the county clerk's designee
10 shall begin the proceedings for that municipality on the last business day before the
11 election. Unless election officials are selected under s. 7.30 (4) (c) without regard to
12 party affiliation, the employees at each central counting location, other than any
13 specially trained technicians who are required for the operation of the automatic
14 tabulating equipment, shall be equally divided between members of the 2 major
15 political parties under s. 7.30 (2) (a) and all duties performed by the employees shall
16 be by teams consisting of an equal number of members of each political party
17 whenever sufficient persons from each party are available.

History: 1979 c. 311; 1985 a. 304; 1997 a. 127; 2001 a. 109; 2011 a. 115.

END INSERT 3-5

INSERT 8-2

18 **SECTION 2. Initial applicability.**

19 (1) This act first applies to the August 11, 2020, primary election.

END INSERT 8-2

Gallagher, Michael

From: Karow, Erin
Sent: Friday, November 22, 2019 11:01 AM
To: Gallagher, Michael
Subject: RE: Early canvassing draft

Hi Mike,

1. Sounds good. That makes sense.
2. That will eliminate some of the confusion. I agree that the machines will likely be at the polling location the day before, and at the central count location for those municipalities. If that makes the most sense to you, I don't see that as an issue.

Thanks,

Erin

From: Gallagher, Michael <Michael.Gallagher@legis.wisconsin.gov>
Sent: Friday, November 22, 2019 10:47 AM
To: Karow, Erin <Erin.Karow@legis.wisconsin.gov>
Subject: Early canvassing draft

Erin: A couple of things for the redraft:

1. On page 8, lines 11-12, I want to change "Ballots canvassed early under this section may not be tabulated until the closing of the polls on election day." To "Ballots canvassed early under this section may not be *tallied* until the closing of the polls on election day." The term "tally" is more appropriate than "tabulate" because "tally" is the term used to describe what happens after the closing of polls on election day under 7.51 (2).
2. I think I can eliminate confusion and complications if the draft simply contemplates that the early canvassing will occur either at the polling place or, as the draft currently contemplates, at the central count location. Given the fact that only municipalities using automatic tabulating equipment will be eligible for early canvassing, it is likely the case that the early canvassing will occur at the polling place where votes will be cast the following day, rather than some other location from which the ballots and equipment would be transported to the polling place on election day. Does that make sense? Currently, the draft contemplates early canvassing at a "place" designated by the municipality that may or may not be the same place where votes will be cast the following day.

Michael P. Gallagher
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 504-5811



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: October 31, 2019

TO: Erin Karow
Office of Senator LeMahieu

FROM: Meagan Wolfe
Administrator
Wisconsin Elections Commission

SUBJECT: LRB-2970/2 Senate Substitute Amendment

WEC staff appreciates the opportunity to provide feedback regarding the draft Senate Substitute Amendment to LRB-2970/2. The Elections Commission has not had an opportunity to weigh in on the draft legislation and therefore the comments below reflect the consensus of WEC staff. The Commission has given staff a general direction to work with the Legislature on the challenge of processing all absentee ballots on Election Day but neither the Commission nor its staff have taken a position on this bill or other legislation related to the issue. The questions and comments below focus on administrative, technical and legal issues we have identified in the draft legislation.

Following are issues that WEC staff has identified which we believe require additional clarification or discussion regarding the draft legislation and the proposed processes.

1. Starting with a general observation regarding Section 9 as the main substantive provision, page 7, lines 17 – 18 states that absentee ballots “may begin being canvassed on the last business day before the election.” There may be some confusion caused by using the term “canvassed.” The term is not defined in Chapter 5 but it is used to discuss the full range of activities conducted by the local board of canvass (Wis. Stat. § 7.51), the municipal board of canvass (Wis. Stat. 7.53), the county board of canvass (Wis. Stat. § 7.60), and the Wisconsin Elections Commission Wis. Stat. § 7.70). In each case the canvass process includes tallying and reporting votes. It is our understanding that the draft legislation does not contemplate those steps but authorizes only the procedures described in Wis. Stat. § 6.88. If that is the case, it may make sense to change the reference to canvassing in Section 9 and substitute terms such as “processing” or “recording.”
2. The draft also does not specifically state what activities are authorized to be completed before Election Day with regard to absentee ballots. Page 8, lines 1 – 3 state that early canvassing of absentee ballots “shall satisfy” procedures for canvassing absentee ballots at the polling place under s. 6.88(3) or a central count location under s. 7.52. If the intent is for this provision to describe the process used before Election Day, it may be more accurate to substitute “shall follow” or “shall be consistent with” for the phrase “shall satisfy.” However, that would still seem to incorporate processes for reconciling ballots and counting and tallying votes that are outlined in s. 7.52 for municipalities using the central count

Wisconsin Elections Commissioners

Dean Knudson, chair | Marge Bostelmann | Julie M. Glancey | Ann S. Jacobs | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

process which do not seem to be part of the bill's intent. We recommend that the bill either specifically spell out the steps to be used prior to Election Day or incorporate processes by citing to other statutes.

3. Page 2, line 4 retains the time period for the public test of voting equipment as within 10 days of Election Day. If the equipment is used prior to Election Day, that would typically trim one day off of the period for the public test to occur before the equipment is used. A clause could be inserted to permit the public test to be conducted within 10 days of its use under s. 7.525 if a municipality chooses that option.
4. The draft bill is not clear as to whether the early processing of ballots will be done by staff of the municipal clerk's office or election inspectors, and if the latter, whether the election inspectors need to reflect the party imbalance required in Wis. Stat. § 7.51(3)(a)
5. The draft bill does not specify whether the municipality will post the number of absentee ballots processed before Election Day, which we would recommend as a transparency measure. It also does not state whether the number of ballots processed will be compared to the number of voters indicated on the poll list, or whether any reconciliation will be conducted if those numbers do not match. This posting requirement is required of municipalities who centrally count their absentee ballots. Wis. Stat. § 7.52(1)(c).
6. We recommend considering language in Section 9 regarding the secure transport of memory devices and ballots to the polling place. Section 9 also does not state whether ballots processed before Election Day will be transported to the polling place or remain in the clerk's office. In order to ensure that write-in votes could be tallied, all ballots should be sent the polling place or central count facility for review and tallying of write-in votes. Wis. Stat. § 6.88(2) currently requires that all absentee ballots be sent to polling places.
7. The bill requires that automatic tabulating equipment be secured with tamper-evident security seals but does not specify where on the equipment these seals should be placed. We would suggest language specifying that the seals should be required on the compartment where the memory device is housed and on the ballot bin of the machine to ensure the two most vulnerable points of the machine are secured.
8. The capability of optical scan voting equipment to accommodate the process needs to be verified. We do not believe there will be any issues relating to using voting equipment as part of this process, but the Commission's certification process does not currently account for and test this type of usage.
9. The draft bill requires consulting with the WEC before adopting this option but does not include any enforcement mechanism if the WEC determines that the municipality is not equipped to implement the process securely and effectively.
10. We received an inquiry from a county clerk who expressed that her municipalities would be interested in taking advantage of the option to process absentee ballots on the last business day prior to the election, but they do not currently use automatic tabulating equipment. These municipalities hand count their ballots rather than feeding them through an optical scan machine, but indicated they would like to engage in the clerical aspect of absentee ballot processing (reviewing certificate envelopes for required information, opening envelopes and organizing ballots for counting on election day) on the last business day before an election.

To allow for this option, s. 7.525(1)(a)(1) could be amended so that 'automatic tabulating equipment' was not a requirement. The procedures outlined in Wis. Stat. §6.88(3) would still be applicable to this process and 7.525(1)(d) could be amended to require ballots processed without using automatic tabulating equipment to be stored in ballot bags sealed with tamper-evident seals.

I hope that this feedback is helpful, and we would be glad to discuss the legislation further with you or the authors and drafters of the legislation.



Thanks!
IPZ
LRBs0132/P1
MPG&JK:cdc

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
SENATE SUBSTITUTE AMENDMENT,
TO SENATE BILL (LRB-2970/2)

Insert

SLA ✓
x-ref ✓
SK ✓

1 **AN ACT** ^{reg} **to amend** 5.84 (1), 5.86 (1), 6.15 (4) (b), 6.86 (1) (b), 6.87 (6), 6.88 (1) and
2 7.52 (1) (a); and **to create** 7.525 and 6.91 of the statutes; **relating to:**
3 ^{of} canvassing absentee ballots on the last business day before an election and
4 providing a penalty.

The ordinance may not take effect without the approval of the Elections Commission

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 on the last business day 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.

may be conducted only at the polling place where voting will occur on election day or at a designated central counting location. Ballots may not be tallied until after polls close 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.

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 Monday before election day.

Under the bill, if a municipality passes an ordinance authorizing the early canvassing of absentee ballots, the municipal clerk or municipal board of election commissioners may elect to canvass ballots early for any particular election, except as otherwise provided in the ordinance.

Crime component

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

in an election

4
5
6

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

9 **SECTION 2.** 5.86 (1) of the statutes is amended to read:

10 5.86 (1) All proceedings at each central counting location shall be under the
11 direction of the municipal clerk or an election official designated by the clerk unless
12 the central counting location is at the county seat ~~and the municipal clerk delegates~~
13 ~~the responsibility to supervise the location to the county clerk~~, in which case the
14 proceedings shall be under the direction of the county clerk or an election official
15 designated by the county clerk. If for any municipality the central counting location
16 is at the county seat and the municipality authorizes or elects the early canvassing
17 of absentee ballots under s. 7.525, the county clerk or the county clerk's designee
18 shall begin the proceedings for that municipality on the ~~last business~~ day before the
19 election. Unless election officials are selected under s. 7.30 (4) (c) without regard to
20 party affiliation, the employees at each central counting location, other than any
21 specially trained technicians who are required for the operation of the automatic
22 tabulating equipment, shall be equally divided between members of the 2 major
23 political parties under s. 7.30 (2) (a) and all duties performed by the employees shall
24 be by teams consisting of an equal number of members of each political party
25 whenever sufficient persons from each party are available.

consistent with that section

between 7am and 8pm

1 **SECTION 3.** 6.15 (4) (b) of the statutes is amended to read:

2 6.15 (4) (b) During polling hours, or on the last business day before the election
3 if authorized or elected for that election under s. 7.525, the inspectors shall open each
4 carrier envelope, announce the elector's name, check the affidavit for proper
5 execution, and check the voting qualifications for the ward, if any. In municipalities
6 where absentee ballots are canvassed under s. 7.52, the municipal board of absentee
7 ballot canvassers shall perform this function at a meeting of the board of absentee
8 ballot canvassers.

9 **SECTION 4.** 6.86 (1) (b) of the statutes is amended to read:

10 6.86 (1) (b) Except as provided in this section, if application is made by mail,
11 the application shall be received no later than 5 p.m. on the 5th day immediately
12 preceding the election. If application is made in person, the application shall be
13 made no earlier than 14 days preceding the election and no later than the Sunday
14 preceding the election. No application may be received on a legal holiday. A
15 municipality shall specify the hours in the notice under s. 10.01 (2) (e). The
16 municipal clerk or an election official shall witness the certificate for any in-person
17 absentee ballot cast. Except as provided in par. (c), if the elector is making written
18 application for an absentee ballot at the partisan primary, the general election, the
19 presidential preference primary, or a special election for national office, and the
20 application indicates that the elector is a military elector, as defined in s. 6.34 (1), the
21 application shall be received by the municipal clerk no later than 5 p.m. on election
22 day. If the application indicates that the reason for requesting an absentee ballot is
23 that the elector is a sequestered juror, the application shall be received no later than
24 5 p.m. on election day. If the application is received after 5 p.m. on the Friday
25 immediately preceding the election, the municipal clerk or the clerk's agent shall

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

10 **SECTION 5.** 6.87 (6) of the statutes is amended to read:

11 6.87 (6) The ballot shall be returned so it is delivered to the ~~polling place~~
12 election inspectors of the proper ward or election district no later than 8 p.m. on
13 election day. Except in municipalities where absentee ballots are canvassed under
14 s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk
15 shall secure the ballot and cause the ballot to be delivered to the polling place serving
16 the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided
17 in this subsection may not be counted.

18 **SECTION 6.** 6.88 (1) of the statutes is amended to read:

19 6.88 (1) When an absentee ballot arrives at the office of the municipal clerk,
20 or at an alternate site under s. 6.855, if applicable, the clerk shall enclose it,
21 unopened, in a carrier envelope which shall be securely sealed and endorsed with the
22 name and official title of the clerk, and the words "This envelope contains the ballot
23 of an absent elector and must be opened ~~in the same room where votes are being cast~~
24 ~~at the polls during polling hours on election day or, in municipalities where absentee~~
25 ~~ballots are canvassed under s. 7.52, stats., at a meeting of the municipal board of~~

1 absentee ballot canvassers under s. 7.52, stats only as provided by law.” If the elector
 2 is a military elector, as defined in s. 6.34 (1), or an overseas elector, regardless of
 3 whether the elector qualifies as a resident of this state under s. 6.10, and the ballot
 4 was received by the elector by facsimile transmission or electronic mail and is
 5 accompanied by a separate certificate, the clerk shall enclose the ballot in a
 6 certificate envelope and securely append the completed certificate to the outside of
 7 the envelope before enclosing the ballot in the carrier envelope. The clerk shall keep
 8 the ballot in the clerk’s office or at the alternate site, if applicable until delivered, as
 9 required in sub. (2).

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

11 **6.91 Place for challenging an elector.** The vote of any voter, including an
 12 absent voter, may be challenged as provided under this subchapter at the polling
 13 place, at the municipal clerk’s office, at an in-person absentee voting location during
 14 the period for making an in-person application for an absentee ballot under s. 6.86
 15 (1) (b), at a location where the early canvassing of absentee ballots is being conducted
 16 under s. 7.525, or at a central count location.

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

18 7.52 (1) (a) The governing body of any municipality may provide by ordinance
 19 that, in lieu of canvassing absentee ballots at polling places under s. 6.88, the
 20 municipal board of absentee ballot canvassers designated under s. 7.53 (2m) shall,
 21 at each election held in the municipality, canvass all absentee ballots received by the
 22 municipal clerk by 8 p.m. on election day. Prior to enacting an ordinance under this
 23 subsection, the municipal clerk or board of election commissioners of the
 24 municipality shall notify the elections commission in writing of the proposed
 25 enactment and shall consult with the elections commission concerning

Subsect 6-91

between 7 a.m. and 8 p.m.

1 administration of this section. At every election held in the municipality following
 2 enactment of an ordinance under this subsection, the board of absentee ballot
 3 canvassers shall, any time after the opening of the polls, or on the last business day
 4 before the election if authorized or elected for that election under s. 7.525, and before
 5 10 p.m. on election day, publicly convene to count the absentee ballots for the
 6 municipality. The municipal clerk shall give at least 48 hours' notice of any meeting
 7 under this subsection. Any member of the public has the same right of access to a
 8 meeting of the municipal board of absentee ballot canvassers under this subsection
 9 that the individual would have under s. 7.41 to observe the proceedings at a polling
 10 place. The board of absentee ballot canvassers may order the removal of any
 11 individual exercising the right to observe the proceedings if the individual disrupts
 12 the meeting.

Insert 7-24

13 SECTION 9. 7.525 of the statutes is created to read:

14 **7.525 Early canvassing of absentee ballots. (1) ORDINANCE AUTHORIZING**

15 EARLY CANVASSING; REQUIREMENTS. (a) 1. The governing body of any municipality that
 16 uses automatic tabulating equipment to process absentee ballots may provide by
 17 ordinance that absentee ballots received by the municipal clerk may begin being
 18 canvassed on the last business ^{day} before the election. Unless the ordinance provides
 19 otherwise, the municipal clerk or municipal board of election commissioners may
 20 elect to canvass ballots early under this section in any election. begin canvassing

21 2. Prior to enacting an ordinance under subd. 1., the municipal clerk or
 22 municipal board of election commissioners shall notify the elections commission in
 23 writing of the proposed enactment and shall consult with the elections commission
 24 concerning administration of this section.

H2-7-24

No ordinance under subd. 1. may take effect unless approved by the elections commission.

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

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

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

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

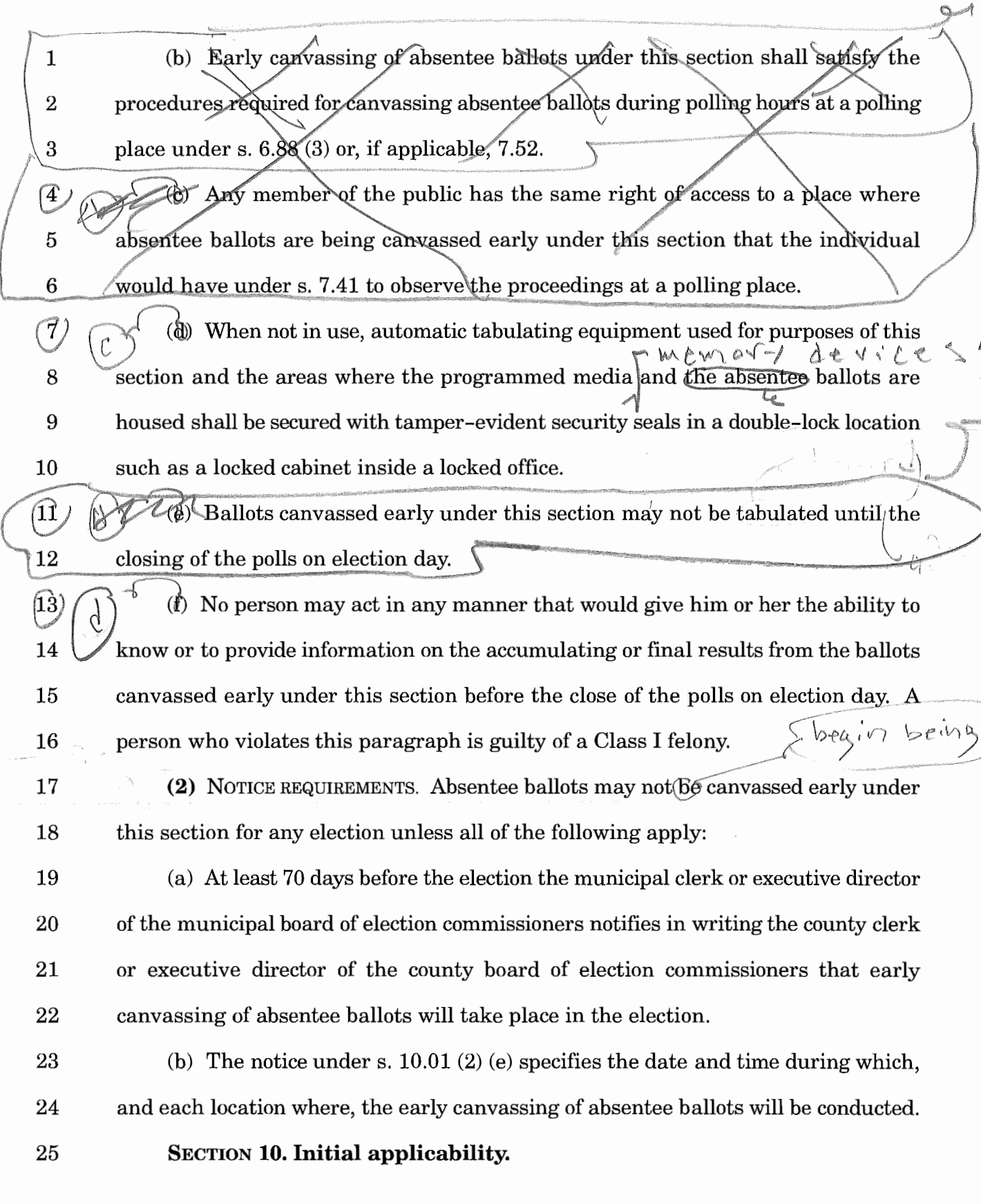
13 (f) No person may act in any manner that would give him or her the ability to
14 know or to provide information on the accumulating or final results from the ballots
15 canvassed early under this section before the close of the polls on election day. A
16 person who violates this paragraph is guilty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

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

19 (a) At least 70 days before the election the municipal clerk or executive director
20 of the municipal board of election commissioners notifies in writing the county clerk
21 or executive director of the county board of election commissioners that early
22 canvassing of absentee ballots will take place in the election.

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

25 **SECTION 10. Initial applicability.**



**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0132/p2ins
MPG:...

INSERT 6-9

SECTION 1. 6.88 (3) (a) of the statutes is amended to read:

6.88 (3) (a) Except in municipalities where absentee ballots are canvassed under s. 7.52, at any time between the opening and closing of the polls on election day, or between 7 a.m. and 8 p.m. on the day before the election if authorized or elected for that election under s. 7.525, the inspectors shall, in the same room where votes are being cast, or in the same room where votes will be cast on election day if absentee ballots begin being canvassed early under s. 7.525, in such a manner that members of the public can hear and see the procedures, open the carrier envelope only, and announce the name of the absent elector or the identification serial number of the absent elector if the elector has a confidential listing under s. 6.47 (2). When the inspectors find that the certification has been properly executed, the applicant is a qualified elector of the ward or election district, and the applicant has not voted in the election, they shall enter an indication on the poll list next to the applicant's name indicating an absentee ballot is cast by the elector. They shall then open the envelope containing the ballot in a manner so as not to deface or destroy the certification thereon. The inspectors shall take out the ballot without unfolding it or permitting it to be unfolded or examined. Unless the ballot is cast under s. 6.95, the inspectors shall verify that the ballot has been endorsed by the issuing clerk. If the poll list indicates that proof of residence under s. 6.34 is required and proof of residence is enclosed, the inspectors shall enter both the type of identifying document submitted by the absent elector and the name of the entity or institution that issued the identifying document on the poll list in the space provided. If the poll list indicates that proof of residence under s. 6.34 is required and no proof of residence is enclosed

or the name or address on the document that is provided is not the same as the name and address shown on the poll list, the inspectors shall proceed as provided under s. 6.97 (2). The inspectors shall then deposit the ballot into the proper ballot box and enter the absent elector's name or voting number after his or her name on the poll list in the same manner as if the elector had been present and voted in person.

~~History:~~ 1971 c. 304 s. 29 (2); 1975 c. 85, 199; 1977 c. 394 ss. 43, 53; 1979 c. 232, 260; 1983 a. 183, 484; 1987 a. 391; 1999 a. 49, 182; 2001 a. 38, 109; 2003 a. 265; 2005 a. 451; 2011 a. 23, 75, 227; 2013 a. 182; 2017 a. 369.

SECTION 2. 7.41 (1) of the statutes is amended to read:

7.41 (1) Any member of the public ^{7.525} may be present at any polling place, including on the day before an election if absentee ballots begin being canvassed early at that polling place under s. ~~7.252~~ in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855 on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee ballot voting process, except a candidate whose name appears on the ballot at the polling place or on an absentee ballot to be cast at the clerk's office or alternate site at that election. The chief inspector or municipal clerk may reasonably limit the number of persons representing the same organization who are permitted to observe under this subsection at the same time. Each person permitted to observe under this subsection shall print his or her name in and sign and date a log maintained by the chief inspector or municipal clerk for that polling place, office, or alternate site.

~~History:~~ 1989 a. 192; 1999 a. 49; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 39, 109; 2005 a. 451; 2013 a. 177; 2015 a. 118.

END INSERT 6-9

INSERT 7-12

SECTION 3. 7.52 (10) of the statutes is created to read:

7.52 (10) If, subject to ~~7.52~~^{s. 7.525}, absentee ballots begin being canvassed under this section on the day before the election, no action under subs. (4) to (8) may be performed before election day.

END INSERT 7-12

INSERT 7-24

(b) Ballots may be canvassed early under this section only between 7 a.m. and 8 p.m. on the day before the election and only at the polling place where votes will be cast on election day or at the designated central counting location to be used to count ballots under s. 7.51 (1). Ballots canvassed early under this section may not be tallied until after the polls close on election day.

END INSERT 7-24