March 26, 2020 - Introduced by Senators Larson, Smith and Carpenter, cosponsored by Representative Brostoff. Referred to Committee on Elections, Ethics and Rural Issues.

**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) (a); and **to create** 6.885 and 6.91 of the statutes; relating to: canvassing absentee ballots during a state of emergency on the Sunday before an election and providing a penalty.

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**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:

SECTION 1. 5.84 (1) of the statutes is amended to read:

5.84 (1) Where any municipality employs an electronic voting system which utilizes automatic tabulating equipment, either at the polling place or at a central counting location, the municipal clerk shall, on any day not more than 10 days prior to the election day on which the equipment is to be utilized, have the equipment tested to ascertain that it will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given by the clerk at least 48 hours prior to the test by publication of a class 1 notice under ch. 985 in one or more newspapers published within the municipality if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to the public. The test shall be conducted by processing a preaudited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each referendum. The test shall include for each office one or more ballots which have votes in excess of the number allowed by law and, for a
partisan primary election, one or more ballots which have votes cast for candidates of more than one recognized political party, in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the municipal clerk shall ascertain the cause and correct the error. The clerk shall make an errorless count before the automatic tabulating equipment is approved by the clerk for use in the election.

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

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

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

6.86 (1) (b) Except as provided in this section, if application is made by mail, the application shall be received no later than 5 p.m. on the 5th day immediately preceding the election. If application is made in person, the application shall be made no earlier than 14 days preceding the election and no later than the Sunday preceding the election. No application may be received on a legal holiday. A municipality shall specify the hours in the notice under s. 10.01 (2) (e). The municipal clerk or an election official shall witness the certificate for any in-person absentee ballot cast. Except as provided in par. (c), if the elector is making written application for an absentee ballot at the partisan primary, the general election, the presidential preference primary, or a special election for national office, and the application indicates that the elector is a military elector, as defined in s. 6.34 (1), the
application shall be received by the municipal clerk no later than 5 p.m. on election
day. If the application indicates that the reason for requesting an absentee ballot is
that the elector is a sequestered juror, the application shall be received no later than
5 p.m. on election day. If the application is received after 5 p.m. on the Friday
immediately preceding the election, the municipal clerk or the clerk’s agent shall
immediately take the ballot to the court in which the elector is serving as a juror and
deposit it with the judge. The judge shall recess court, as soon as convenient, and
give the elector the ballot. The judge shall then witness the voting procedure as
provided in s. 6.87 and shall deliver the ballot to the clerk or agent of the clerk who
shall deliver it to the polling place election inspectors of the proper ward or election
district or, in municipalities where absentee ballots are canvassed under s. 7.52, to
the municipal clerk as required in s. 6.88. If application is made under sub. (2) or
(2m), the application may be received no later than 5 p.m. on the Friday immediately
preceding the election.

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

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

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

6.88 (1) When an absentee ballot arrives at the office of the municipal clerk,
or at an alternate site under s. 6.855, if applicable, the clerk shall enclose it,
unopened, in a carrier envelope which shall be securely sealed and endorsed with the name and official title of the clerk, and the words “This envelope contains the ballot of an absent elector and must be opened in the same room where votes are being cast at the polls during polling hours on election day or, in municipalities where absentee ballots are canvassed under s. 7.52, stats., at a meeting of the municipal board of absentee ballot canvassers under s. 7.52, stats only as provided by law.” If the elector is a military elector, as defined in s. 6.34 (1), or an overseas elector, regardless of whether the elector qualifies as a resident of this state under s. 6.10, and the ballot was received by the elector by facsimile transmission or electronic mail and is accompanied by a separate certificate, the clerk shall enclose the ballot in a certificate envelope and securely append the completed certificate to the outside of the envelope before enclosing the ballot in the carrier envelope. The clerk shall keep the ballot in the clerk’s office or at the alternate site, if applicable until delivered, as required in sub. (2).

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

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

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

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

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

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

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

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

(f) 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 this section before the close of the polls on election day. A person who violates this paragraph is guilty of a Class I felony.

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

(a) As soon as practicable before the election the municipal clerk or executive director of the municipal board of election commissioners notifies in writing the county clerk or executive director of the county board of election commissioners that early canvassing of absentee ballots will take place in the election.
(b) The notice under s. 10.01 (2) (e) specifies the date and time during which, and each location where, the early canvassing of absentee ballots will be conducted.

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

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

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

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

(END)