2021 SENATE BILL 214

March 16, 2021 – Introduced by Senators STAFSHOLT, STROEBEL, DARLING and FEYEN, cosponsored by Representatives TAUCHE, GUNDRUM and LOUDENBECK. Referred to Committee on Elections, Election Process Reform and Ethics.

AN ACT to repeal 8.20 (8) (am); to amend 5.25 (2), 5.84 (1), 7.15 (1) (cm), 7.52 (1) (a), 7.52 (2), 7.52 (3) (a), 7.52 (4) (a) and 8.20 (8) (a); and to create 6.19, 7.52 (1) (d) to (g) and 7.52 (10) of the statutes; relating to: early canvassing of absentee ballots, issuance of presidential ballots, combined polling places, timeline for sending or transmitting absentee ballots, nomination papers for certain independent candidates, and providing a penalty.

Analysis by the Legislative Reference Bureau

EARLY CANVASSING OF ABSENTEE BALLOTS

Under current law, absentee ballots may not be canvassed until election day. Also under current law, any municipality may provide by ordinance that, in lieu of canvassing absentee ballots at polling places, a municipal board of absentee ballot canvassers established by the municipality is responsible for canvassing all absentee ballots received by the municipal clerk by 8 p.m. on election day. In such a municipality, the board of absentee ballot canvassers is required to convene a meeting any time after the polls open and before 10 p.m. on election day to canvass the absentee ballots cast in the municipality in the election. Among the requirements governing such a meeting, any member of the public has the same right of access to the meeting that the individual would have to observe the canvassing of absentee ballots at a polling place.
This bill authorizes the municipal board of absentee ballot canvassers in such a municipality to begin canvassing absentee ballots on the day before an election, subject to the following requirements:

1. The board must convene its meeting no earlier than 7 a.m. on the day before the election nor later than 10 p.m. on election day. The meeting must continue until all absentee ballots have been counted, except that, if the meeting convenes on the day before the election, the meeting must adjourn no later than 10 p.m. that day and must reconvene no earlier than 7 a.m. on election day.

2. At least daily while ballots are being canvassed, the municipal clerk or his or her designee must post, at his or her office and on the Internet at a site announced by the clerk before canvassing begins, and must make available to any person upon request, a statement that shows the number of absentee ballots that the board has canvassed and the number of absentee ballots remaining to be canvassed.

3. If the meeting of the board of absentee ballot canvassers convenes on the day before the election, the board is required to secure the automatic tabulating equipment, and the areas where the programmed media, memory devices, and absentee ballots are housed, with tamper-evident security seals in a double-lock location such as a locked cabinet inside a locked office. Before resuming the canvassing of absentee ballots on election day, the board must check and record the status of each tamper-evident seal and must immediately notify the Elections Commission of any evidence of tampering. If the board discovers evidence of tampering with respect to automatic tabulating equipment, the canvass may not resume until after the equipment is replaced and tested in the manner provided by law. Also, if the board discovers evidence of tampering, after the election, the municipality is required conduct a recount in the manner provided by law and must audit the election equipment to verify the accuracy of the absentee ballot count.

4. Absentee ballots canvassed under the bill may not be tallied until after the canvass is complete or after the polls close on election day, whichever is later.

5. No person may act in a 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 under the bill before the canvass is complete or before the polls close on election day, whichever is later. Whoever intentionally violates that prohibition is guilty of a Class I felony, the penalty for which is a fine not to exceed $10,000 or imprisonment not to exceed three years and six months, or both.

Finally, under current law, criminal penalties are provided for election officials who commit certain specified kinds of election fraud. Otherwise, the willful neglect or refusal of an election official to perform a duty prescribed under the election laws is punishable by disqualification to act as an election official for five years. Under the bill, a member of the municipal board of absentee ballot canvassers or other election official who willfully neglects or refuses to perform any of the duties prescribed under the bill, and other duties prescribed under current law, with respect to the canvassing of absentee ballots by a municipal board of absentee ballot canvassers is guilty of a Class I felony.
SENATE BILL 214

ISSUANCE OF PRESIDENTIAL BALLOTS

Under current law, certain new and former residents of Wisconsin may apply for and receive a ballot for the purpose of voting only for candidates for president and vice president at a presidential election in Wisconsin. This bill prohibits poll workers and other election officials from providing a ballot used for voting for the offices of president and vice president only, unless the elector is a new or former resident of the state and applies and qualifies for the presidential ballot as provided by law.

COMBINED POLLING PLACES

This bill authorizes any city, village, or town with a population of less than 35,000 to enter into an agreement to share a polling place with an adjacent city, village, or town also having a population of less than 35,000.

TIMELINE FOR SENDING OR TRANSMITTING ABSENTEE BALLOTS

Current law requires a municipal clerk to send an absentee ballot for each partisan primary, presidential preference primary, and general election to all electors requesting the ballot, including military and overseas electors, no later than the 47th day before the partisan primary, presidential preference primary, or general election or, if the request is not made before that day, within one business day after the request is received. For all other primaries and elections, the municipal clerk must send or transmit the absentee ballot no later than the 21st day before the primary or election or, if the request is not made before that day, within one business day after the request is received.

Under this bill, a municipal clerk must send or transmit an absentee ballot for all primaries and elections, regardless of the type of primary or election, to electors other than military and overseas electors no later than the 21st day before the primary or election or, if the request is not made before that day, within one business day after the request is received. Under the bill, a municipal clerk must send or transmit an absentee ballot for all primaries and elections, regardless of the type of primary or election, to military and overseas electors no later than the 45th day before the primary or election or, if the request is not made before that day, within one business day after the request is received. That 45th day timeline is consistent with federal law.

NOMINATION PAPERS FOR CERTAIN INDEPENDENT CANDIDATES

Under current law, nomination papers for independent candidates for any office to be voted upon at a general election, except president and vice president, may be circulated no sooner than the April 15 preceding the general election and must be filed no later than 5 p.m. on the June 1 preceding the partisan primary, which is held on the second Tuesday in August preceding the general election. Under current law, nomination papers for independent candidates for president and vice president may be circulated no sooner than the July 1 preceding the general election and must be filed no later than 5 p.m. on the first Tuesday in August preceding a presidential election.

Under this bill, the timeline for circulating and filing nomination papers for independent candidates for president and vice president is the same as that for all other independent candidates for offices to be voted on at the general election:
nomination papers may be circulated no sooner than the April 15 preceding the general election and must be filed no later than the June 1 preceding the partisan primary.

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.

_Senate Bill 214_

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

SECTION 1. 5.25 (2) of the statutes is amended to read:

5.25 (2) In cities over 500,000 population, polling shall be at the places established by the board of election commissioners. In all other cities and in villages and towns, polling shall be at the places established by the governing body. The governing body of any city, village, or town with a population of less than 35,000 may enter into an agreement to share a polling place with an adjacent city, village, or town also having a population of less than 35,000.

SECTION 2. 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 in an election, 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
SENATE BILL 214

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 3. 6.19 of the statutes is created to read:

6.19 Presidential ballots. (1) In this section, “presidential ballot” means a ballot that allows an elector to vote only for candidates for president and vice president.

(2) No election inspector or other election official may provide a presidential ballot to an elector for voting at a presidential election, except as provided under ss. 6.15 and 6.18.

SECTION 4. 7.15 (1) (cm) of the statutes is amended to read:

7.15 (1) (cm) Prepare official absentee ballots for delivery to electors requesting them, and except as provided in this paragraph, send an official absentee ballot to each elector who has requested a ballot by mail, and to each military elector, as defined in s. 6.34 (1), and overseas elector who has requested a ballot by mail, electronic mail, or facsimile transmission, no later than the 47th 45th day before each partisan primary, presidential preference primary, special primary or election, and general election and no later than the 21st day before each other primary and election if the request is made before that day; otherwise, the municipal clerk shall
send or transmit an official absentee ballot within one business day of the time the
military or overseas elector’s request for such a ballot is received. The clerk shall
send or transmit an absentee ballot for the presidential preference primary to each
elector who has requested that to all other electors requesting a ballot no later than
the 47th 21st day before the presidential preference primary or election if the request
is made before that day, or, if the request is not made before that day, within one
business day of the time the request is received. For purposes of this paragraph,
“business day” means any day from Monday to Friday, not including a legal holiday
under s. 995.20.

SECTION 5. 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. 6.68, 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 and before 10 p.m. on election
day, publicly convene a meeting no earlier than 7 a.m. on the day before the election
nor later than 10 p.m. on election day to count the absentee ballots for the
municipality. The meeting shall continue until all absentee ballots received by the
municipal clerk by 8 p.m. on election day have been counted, except that, if the
meeting convenes on the day before the election, the meeting shall adjourn no later
than 10 p.m. that day and shall reconvene no earlier than 7 a.m. on election day. 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.

SECTION 6. 7.52 (1) (d) to (g) of the statutes are created to read:

7.52 (1) (d) At least daily while ballots are being canvassed under this section,
the municipal clerk or his or her designee shall post, at his or her office and on the
Internet at a site announced by the clerk before canvassing begins, and shall make
available to any person upon request, a statement that shows the number of absentee
ballots that the board of absentee ballot canvassers has canvassed and the number
of absentee ballots remaining to be canvassed. The posting may not include the
names or addresses of any electors.

(e) If the meeting of the board of absentee ballot canvassers adjourns on the day
before the election, as provided under par. (a), the board of absentee ballot canvassers
shall secure the automatic tabulating equipment, and the areas where the
programmed media, memory devices, and absentee ballots are housed, with
tamper-evident security seals in a double-lock location such as a locked cabinet
inside a locked office. Before resuming the canvassing of ballots on election day, the
board of absentee ballot canvassers shall check and record the status of each
tamper-evident seal. The clerk of the board of absentee ballot canvassers shall
immediately notify the commission of any evidence of tampering. If the board of
absentee ballot canvassers discovers evidence of tampering with respect to automatic tabulating equipment, the canvass may not resume until after the equipment is replaced and tested as provided in s. 5.84 (1). If the board of absentee ballot canvassers discovers evidence of tampering under this paragraph, after the election, the municipality shall conduct a recount in the manner provided under s. 9.01 and audit the election equipment to verify the accuracy of the absentee ballot count in the municipality in the election.

(f) Absentee ballots canvassed under this section may not be tallied until after the canvass is complete or after the polls close on election day, whichever is later.

(g) No person may intentionally act in a 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 under this section before the canvass is complete or before the polls close on election day, whichever is later. Whoever intentionally violates this paragraph is guilty of a Class I felony.

SECTION 7. 7.52 (2) of the statutes is amended to read:

7.52 (2) In counting the absentee ballots, the board of absentee ballot canvassers shall use 2 duplicate copies of a single absentee poll list for the entire municipality prepared in accordance with s. 6.36 (2). Upon accepting reviewing each absentee ballot certificate envelope to ensure that it satisfies all applicable legal requirements, the board of absentee ballot canvassers shall enter a poll list sequential count number on the absentee poll list next to the name of the elector who voted the ballot, beginning with the number one. If the elector’s name does not appear on the absentee poll list, the board of absentee ballot canvassers shall enter the number on a separate list maintained under this subsection. The board of
abstee ballot canvassers shall record each elector’s sequential count number on the face of the elector’s certificate envelope.

SECTION 8. 7.52 (3) (a) of the statutes is amended to read:

7.52 (3) (a) The board of absentee ballot canvassers shall first open the carrier envelope only, and, in such a manner that a member of the public, if he or she desired, could hear, 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 board of absentee ballot canvassers finds that the certification has been properly executed and the applicant is a qualified elector of the ward or election district, the board of absentee ballot canvassers shall enter an indication, including the elector’s sequential count number as provided under sub. (2), on the absentee poll list next to the applicant’s name indicating an absentee ballot is cast by the elector.

The board of absentee ballot canvassers shall then open the envelope containing the ballot in a manner so as not to deface or destroy the certification thereon. The board of absentee ballot canvassers shall take out the ballot without unfolding it or permitting it to be unfolded or examined and shall remove the ballot from the certificate envelope. Unless the ballot is cast under s. 6.95, the board of absentee ballot canvassers shall verify that the ballot has been endorsed by the issuing clerk.

If the absentee poll list indicates that proof of residence 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 absentee poll list, the board of absentee ballot canvassers shall proceed as provided under s. 6.97 (2). The board of absentee ballot canvassers shall mark the poll list number of each elector who casts an absentee ballot on the back of the elector’s ballot. The board of absentee ballot canvassers shall then deposit the ballot into the proper ballot box and enter the
absent elector’s name or poll list number after his or her name on the poll list or automatic tabulating equipment.

Section 9. 7.52 (4) (a) of the statutes is amended to read:

7.52 (4) (a) The board of absentee ballot canvassers shall then open the ballot box and remove and count the number of ballots therein without examination except as is necessary to ascertain that each is a single ballot. If 2 or more ballots are folded together so as to appear as a single ballot, the board of absentee ballot canvassers shall lay them aside until the count is completed; and if, after a comparison of the count and the appearance of the ballots it appears to the board of absentee ballot canvassers that the ballots folded together were voted by the same person they shall not be counted but the board of absentee ballot canvassers shall mark them as to the reason for removal, set them aside, and carefully preserve them. The board of absentee ballot canvassers shall then proceed under par. (b).

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

7.52 (10) A member of the board of absentee ballot canvassers or other election official who willfully neglects or refuses to perform any of the duties prescribed under this section is guilty of a Class I felony.

Section 11. 8.20 (8) (a) of the statutes is amended to read:

8.20 (8) (a) Nomination papers for independent candidates for any office to be voted upon at a general election, except president, vice president and presidential elector, may be circulated no sooner than April 15 preceding the election and may be filed no later than 5 p.m. on the June 1 preceding the partisan primary, except as authorized in this paragraph. If an incumbent fails to file nomination papers and a declaration of candidacy by 5 p.m. on June 1 preceding the partisan primary, all candidates for the office held by the incumbent, other than the incumbent, may file
nomination papers no later than 72 hours after the latest time prescribed in this paragraph. No extension of the time for filing nomination papers applies if the incumbent files written notification with the filing officer or agency with whom nomination papers are filed for the office which the incumbent holds, no later than 5 p.m. on the 2nd Friday preceding the latest time prescribed in this paragraph for filing nomination papers, that the incumbent is not a candidate for reelection to his or her office, and the incumbent does not file nomination papers for that office within the time prescribed in this paragraph.

SECTION 12. 8.20 (8) (am) of the statutes is repealed.