



**DAN FEYEN**

**STATE SENATOR**

18th Senate District  
(608) 266-5300  
Sen.Feyen@legis.wi.gov

PO Box 7882, Madison, WI 53707-7882  
<http://legis.wisconsin.gov/senate/18/feyen>

To: The Senate Committee on Shared Revenue, Elections and Consumer Protection  
From: Sen. Dan Feyen  
Re: Senate Bill 852

Hello members of the committee, thank you for taking the time to hear testimony on SB 852.

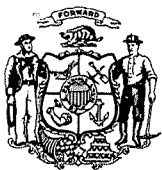
SB 852 is a relatively simple bill that will bring the timelines of Wisconsin's presidential elections in line with Federal standards.

In 2022 the federal government passed the Electoral Count Reform Act (ECRA), which seeks to streamline the process for how electoral votes get from the states to the Electoral College. The ECRA requires each state executive to issue a certificate of ascertainment at least six days before the Electoral College meets.

In order for Wisconsin to meet this new deadline, certain changes must be made to bring us into compliance. To ensure any and all challenges to the results of an election are heard and decided in a timely manner, Wisconsin must change the dates and deadlines surrounding canvassing, recounts, and court challenges.

Here is a summary of the bill's changes:

- Moves the deadline for the governor to deliver his signed certificates of elections results to the state's presidential electors from the first Monday after the second Wednesday in December to the first Tuesday after the second Wednesday in December.
- Moves the meeting of the presidential and vice presidential electors from the first Monday after the second Wednesday to the first Tuesday after the second Wednesday.
- Shortens the timeline on the canvass of election results from 10 days to one day.
- Shortens the commencing of a recount by requiring the Elections Commission to order the recount electronically, instead of through certified mail. It also requires the elections commission to make the order on the same day the Commission receives the petition and requires the board of canvassers to begin the recount no later than 9 am on the second day after receiving the order.
- Shortens the timeline for transmitting the results of a recount back to the commission from 13 days to 10 days.
- Requires any appeal of a recount to be submitted to the Circuit Court within 2 days instead of 5 and then requires the Circuit Court to make it's ruling within 2 days instead of as soon as possible.



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- Shortens the time to appeal a Circuit Court decision to the Appeals Court from 30 days to 2 days and gives the Appeals Court 2 days to render a decision

We are happy to hear feedback from both Committee members and the Wisconsin Elections Committee on this bill. Thank you again for holding this hearing and I am happy to answer any questions.

## **SB 852 Testimony**

January 25, 2024

Thank you Chair Knodl, and good morning, members. My name is Edgar Lin, and I am Protect Democracy's Wisconsin policy lead & counsel.

I want to thank Senator Feyen for inviting Protect Democracy to discuss this important bill. We appreciate the work of this committee and are encouraged by your efforts to ensure that election procedures work smoothly and comply with the new federal law with respect to elections for president and vice president.

### *Summary of ECRA/Need for WI alignment*

The Electoral Count Act (ECA), as updated by the Electoral Count Reform Act of 2022 (ECRA), provides the primary legal framework for casting and counting Electoral College votes in presidential elections. While most of the ECRA's changes affect the process by which Congress must count each state's electoral votes, the law also makes some changes to the requirements for a state to certify its election results to Congress. In particular, the new law replaces the former "safe harbor" deadline for state certification with a firm deadline. To meet the new federal deadline, which is the second Wednesday of December (December 11, 2024), states must ensure that their canvass, recount, and any pre-certification audit procedures are completed in the 36-day window between Election Day (November 5, 2024) and the new certification deadline. The federal law also updates the technical requirements for the official certification of results for the presidential and vice presidential elections and the date for electors to meet. The National Conference of State Legislatures has highlighted ECRA alignment as an emerging policy priority along with resources on state activities.<sup>1</sup>

Wisconsin should update its laws to align with the new dates specified for the certification of election results and the meeting of presidential electors – both of which have shifted one day from current law – as well as to meet the technical requirements for the certification. In addition, under current Wisconsin state law there is a potential that post-election procedures in the presidential race – particularly any recounts and related litigation – could extend beyond the December 11 federal certification deadline. To comply with the new federal certification deadline, Wisconsin should tighten the timeline for such procedures to ensure completion within the time provided by the ECRA. A number of states such as North Dakota, Indiana, Colorado, Michigan, Kansas,

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<sup>1</sup> <https://www.ncsl.org/state-legislatures-news/details/ai-electoral-count-reform-emerge-as-elections-policy-priorities> & <https://www.ncsl.org/elections-and-campaigns/enactments-relating-to-the-electoral-count-reform-act>

Nevada, and others have taken steps to ensure their timeline and procedures align with ECRA's new requirements.

### *Legislation*

This legislation makes those needed adjustments.

First, it would change two key deadlines in state law to align with the federal statute. Specifically, the deadline for the governor to sign and officially transmit the certificate of election results would shift one day later to 36 days after the election or no later than six days before the date the electors meet – December 11 in 2024. The date for electors to meet in the state capitol would also move one day later to the first Tuesday after the second Wednesday, or December 17 in 2024.

Second, the bill makes small logistical adjustments to the required certificate, specifying that it be mailed to the archivist of the United States by the quickest and most secure means and that it be countersigned promptly by the Secretary of State.

Then, the bill makes a series of adjustments to help facilitate the timely processing of election results and any post-election procedures to help ensure they can be completed within the timeframe laid out by the federal law. Specifically, the law would set clearer, shorter deadlines for the state canvass of election results. It would also expedite the timeline to begin and conduct a requested recount, including any appeal of the results. Based on feedback we have received, it is clear there may be amendments related to proposed dates and several other housekeeping requirements. We welcome discussion of ways to strengthen the bill and will be working with stakeholders to address these and any other issues in a timely manner.

We support this excellent bill and look forward to working with the legislature and interested parties to move it towards passage to ensure effective implementation of the bipartisan Electoral Count Reform Act.

Edgar Lin  
Protect Democracy  
WI Policy Strategist and Counsel