
Wisconsin Legislative Council

AMENDMENT MEMO



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2021 Senate Bill 946

Assembly Substitute Amendment 1

CURRENT LAW

A municipality generally canvasses absentee ballots at its polling places on Election Day. However, current law allows a municipality to use an absentee ballot board of canvassers to canvass absentee ballots, and also allows municipalities to count ballots at an alternate, centralized location using a procedure commonly referred to as “central count.” A municipality may adopt the procedure if its city council, village board, or town board enacts an ordinance to do so. Under current law, the canvassing of absentee ballots at either a polling place or a central count location cannot begin before polls open on Election Day.

2021 SENATE BILL 946

Senate Bill 946 provides whistleblower protection for municipal clerks who report election fraud or irregularities. Specifically, the bill prevents a municipal clerk from being discharged, disciplined, demoted, or otherwise discriminated against in regard to employment, or threatened with this treatment, because the clerk lawfully reported witnessing what the clerk reasonably believed to be election fraud or irregularities.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 adds provisions to Senate Bill 946 that are similar to the contents of 2021 Senate Bill 214, as amended. The Assembly substitute amendment allows for early canvassing of absentee ballots on the day before the election. Under the substitute amendment, a municipality that canvasses absentee ballots at the polling place has the option to begin canvassing absentee ballots on the day prior to the election, if the governing body adopts an ordinance to this effect. The poll workers may convene on the day before the election to canvass absentee ballots beginning at 7 a.m.

A municipality that uses an absentee ballot board of canvassers must begin canvassing absentee ballots the day before the election for certain elections. These municipalities are required to begin canvassing absentee ballots the day before any spring election, general election, special election for state or national office, or recall election for state or national office, but has the option to do so for any other election. The board of absentee ballot canvassers must convene at 7 a.m. on the day before the election and must recess at 8 p.m., or when there are no further absentee ballots to process, and must reconvene at 7 a.m. on Election Day to complete its work.

The substitute amendment allows canvassing of absentee ballots the day before the election, but prohibits tallying of the ballots until after the polls close on Election Day. The substitute amendment criminalizes early tallying as a Class I felony. The amendment also criminalizes finding out or sharing information on the accumulating results from the canvassed absentee ballots prior to the close of polls on Election Day, and makes such action a Class I felony.

Next, the substitute amendment creates security requirements relating to the automatic tabulating equipment and ballots, including a requirement to use tamper-evident seals and store equipment and ballots in a double-locked location. The board of absentee ballot canvassers or poll workers must check and record the status of tamper-evident seals on equipment and storage areas before resuming its canvass on Election Day. If the board or poll workers discover evidence of tampering with automatic tabulating equipment, they cannot resume the canvass until after the equipment is replaced and tested. If the board or poll workers discover evidence of other tampering, they must conduct a recount after the election and audit the election equipment to verify the accuracy of the absentee ballot count.

The substitute amendment also imposes reporting requirements regarding absentee ballot canvassing and Election Night canvassing. Any municipality canvassing absentee ballots on the day before the election must provide statements to the county clerk at 7 a.m., Noon, and 8 p.m. showing: (1) the number of absentee ballots returned; (2) the number of absentee ballots already canvassed; and (3) the number of absentee ballots that have yet to be canvassed. The county clerk must post these statements on the county site where election night returns are posted. Additionally, the municipal clerk must provide a statement to the county clerk on Election Night at 9 p.m. and every hour thereafter showing: (1) the number of ballots (including absentee) cast; (2) the number of ballots (including absentee) that have already been canvassed; and (3) the number of ballots (including absentee) that have yet to be canvassed. The county clerk must post these statements on the internet site used for posting Election Night returns.

Next, the substitute amendment changes the existing deadline requiring municipal clerks to mail absentee ballots to voters 47 days prior to an election. Under the amendment, a clerk must mail absentee ballots to military and overseas (MOVE) voters at least 45 days before an election, and must mail absentee ballots to all other voters at least 21 days before an election.

Finally, the substitute amendment prohibits election officials from giving presidential-only ballots to any voter other than those qualifying under specific statutes, and changes the dates during which independent candidate for president may circulate nomination papers to match circulation dates for other candidates.

BILL HISTORY

Assembly Substitute Amendment 1 was offered by Representatives Petersen and Tauchen on February 24, 2022. On that date, the Assembly adopted the substitute amendment and concurred in Senate Bill 946, as amended, on votes of Ayes, 55; Noes, 35.

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