



State of Wisconsin
2023 - 2024 LEGISLATURE

LRBs0293/1
JK:emw

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 852**

February 9, 2024 - Offered by Senator FEYEN.

1 **AN ACT to amend** 7.51 (5) (b), 7.53 (1) (a), 7.53 (2) (d), 7.60 (3), 7.60 (5) (a), 7.70
2 (1) (b), 7.70 (3) (a), 7.70 (3) (c), 7.70 (5) (b), 7.75 (1), 9.01 (1) (ar) 3., 9.01 (6) (a),
3 9.01 (6) (b), 9.01 (7) (b) and 9.01 (9) (a); and **to create** 7.70 (3) (cm), 9.01 (1) (ar)
4 4., 9.01 (6) (am), 9.01 (9) (am) and 9.01 (9) (cm) of the statutes; **relating to:**
5 compliance with the federal Electoral Count Reform Act.

Analysis by the Legislative Reference Bureau

Under the federal Electoral Count Reform Act, states should ensure that their canvass, recount, and any precertification procedures are completed within a 36-day period from the date of a presidential election to the date in which a state certifies its presidential election results. This bill makes the following changes to Wisconsin election laws in order to comply with deadlines established by the ECRA for selecting presidential electors and transmitting election results to Congress:

1. Current law does not include a state deadline for certification of a presidential election. The bill requires the governor to transmit a certificate of the election results to the archivist of the United States no later than six days before the meeting of the state's presidential electors.

2. Current law requires the governor to deliver six duplicate originals of the certificate described above to one of the state's presidential electors on or before the

first Monday after the second Wednesday in December. The bill changes the deadline for delivering the certificate to the first Tuesday after the second Wednesday in December.

3. Current law requires the electors for president and vice president to meet at the state capitol at noon on the first Monday after the second Wednesday in December. The bill requires the electors to meet on the first Tuesday after the second Wednesday in December.

4. Current law requires the Elections Commission chairperson to complete the state canvass of election results within 10 days from the day on which it commences and, for a general election, no later than December 1 following the election. With regard to a presidential election, the bill requires that commission chairperson to complete the state canvass no later than 16 days after the election.

5. Under current law, when the Elections Commission receives a valid petition for a recount, it must promptly order the proper county board of canvassers to commence the recount. The order must be sent by certified mail or by “other expeditious means,” and the county board of canvassers must commence the recount no later than 9 a.m. on the third day after receiving the order. With regard to a presidential election, the bill requires that the order be sent immediately, on the same day on which the commission receives the petition, and by email or other electronic transmission. In addition, the board of canvassers must commence a recount no later than 9 a.m. on the second day after receiving an order and may not adjourn until the recount is complete in the county, except to the extent permitted by the commission.

6. Under current law, a candidate may file an appeal of the recount results with the circuit court within five business days after the recount is completed. With regard to a presidential election, the bill shortens that deadline to one business day. The bill also requires the court to make a determination on the appeal no later than 10 days after the day on which the appeal is filed rather than “as expeditiously as possible,” as provided under current law.

7. With regard to a recount, current law allows a candidate aggrieved by an order of the circuit court to file an appeal with the court of appeals within 30 days after the circuit court’s order. Under the bill, with regard to a presidential election recount, a candidate who wishes to appeal a circuit court order must file his or her appeal with the Wisconsin Supreme Court. The bill requires a candidate to file his or her appeal no later than the day after the circuit court issues its order. The bill also requires the supreme court to resolve such appeals as soon as possible and directs the governor to update the certificate of the election results pursuant to an order of the supreme court, if the court issues the order no later than the day before the date on which the presidential electors are to convene.

8. Finally, the bill adjusts municipal and county canvassing deadlines with regard to a presidential election in order to conform with the other changes made by the bill.

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

1 **SECTION 1.** 7.51 (5) (b) of the statutes is amended to read:

2 7.51 (5) (b) The municipal clerk shall deliver all ballots, statements, tally
3 sheets, lists, and envelopes relating to a school district election to the school district
4 clerk, excluding any provisional ballots, by 4 p.m. on the day following each such
5 election and shall deliver to the school district clerk any amended statements, tally
6 sheets, and lists for additional provisional ballots canvassed under s. 6.97 (4) no later
7 than 4 p.m. on the Monday after the election. The municipal clerk shall deliver to
8 the county clerk the ballots, statements, tally sheets, lists, and envelopes for his or
9 her municipality relating to any county, technical college district, state, or national
10 election no later than 4 p.m. on the day following each such election or, in
11 municipalities where absentee ballots are canvassed under s. 7.52, by 4 p.m. on the
12 2nd day following each such election, and shall deliver to the county clerk any
13 additional provisional ballots canvassed under s. 6.97 (4) together with amended
14 statements, tally sheets, lists, and envelopes no later than 4 p.m. on the Monday after
15 the election or, for a presidential election, no later than 4 p.m. on the Friday after the
16 election. The person delivering the returns shall be paid out of the municipal
17 treasury. Each clerk shall retain ballots, statements, tally sheets, or envelopes
18 received by the clerk until destruction is authorized under s. 7.23 (1).

19 **SECTION 2.** 7.53 (1) (a) of the statutes is amended to read:

1 7.53 (1) (a) Where the municipality constitutes one ward or combines all wards
2 to utilize a single polling place under s. 5.15 (6) (b), the canvass of the votes cast at
3 the polling place shall be conducted publicly under s. 7.51 and the inspectors, other
4 than any inspector appointed under s. 7.30 (1) (b), shall act as the municipal board
5 of canvassers. The inspectors shall then complete the return statement for all votes
6 cast at the polling place. If there are no provisional ballots that are eligible to be
7 counted under s. 6.97 and no absentee ballots are being canvassed under s. 7.52, the
8 inspectors may complete and sign the canvass statement and determination on
9 election night. In municipalities where absentee ballots are canvassed under s. 7.52,
10 after the canvass of the absentee ballots is completed under s. 7.52, the board of
11 absentee ballot canvassers shall reconcile the poll list of the electors who vote by
12 absentee ballot with the corresponding poll list of the electors who vote in person to
13 ensure that no elector is allowed to cast more than one ballot. If an elector who votes
14 in person has submitted an absentee ballot, the absentee ballot is void. Except as
15 authorized in par. (b), if one or more electors of the municipality have cast provisional
16 ballots that are eligible to be counted under s. 6.97, the inspectors, acting as the board
17 of canvassers, shall reconvene no later than 9 a.m. on the Monday after the election,
18 or no later than 4 p.m. on the Friday after a presidential election, to count the valid
19 provisional ballots and shall adjust the returns accordingly. The inspectors, acting
20 as the board of canvassers, need not reconvene if the municipal clerk certifies that
21 he or she has received no provisional ballots from the time that the board of
22 canvassers completed the initial canvass and 4 p.m. on the Friday after the election.
23 Upon completion of the canvass under this paragraph and any canvass that is
24 conducted under s. 7.52 and ascertainment of the results by the inspectors or, in
25 municipalities where absentee ballots are canvassed under s. 7.52, by the inspectors

1 and the board of absentee ballot canvassers, the municipal clerk shall publicly read
2 to the inspectors or the board of absentee ballot canvassers the names of the persons
3 voted for and the number of votes for each person for each municipal office, the names
4 of the persons declared by the inspectors or board of absentee ballot canvassers to
5 have won nomination or election to each municipal office, and the number of votes
6 cast for and against each municipal referendum question.

7 **SECTION 3.** 7.53 (2) (d) of the statutes is amended to read:

8 7.53 (2) (d) In municipalities with one polling place, the canvass shall be
9 conducted under sub. (1) publicly on election night. In other municipalities, the
10 municipal board of canvassers shall publicly canvass the returns of every election.
11 The canvass shall begin no earlier than the time that the municipal board of
12 canvassers receives the returns from all polling places in the municipality on election
13 night and no later than 9 a.m. on the Monday after the election, except that, for a
14 presidential election, the canvass shall begin no later than 4 p.m. on the Friday after
15 the election. After any canvass of the absentee ballots is completed under s. 7.52, the
16 board of canvassers shall reconcile the poll list of the electors who vote by absentee
17 ballot with the corresponding poll list of the electors who vote in person to ensure that
18 no elector is allowed to cast more than one ballot. If an elector who votes in person
19 has submitted an absentee ballot, the absentee ballot is void. At the spring election,
20 the board of canvassers shall publicly declare the results on or before the 3rd Tuesday
21 in April. The board of canvassers shall prepare a statement showing the results of
22 each election for any municipal office and each municipal referendum. After each
23 primary for municipal offices, the board of canvassers shall prepare a statement
24 certifying the names of those persons who have won nomination to office. After each
25 other election for a municipal office and each municipal referendum, the board of

1 canvassers shall prepare a determination showing the names of the persons who are
2 elected to each municipal office and the results of each municipal referendum. The
3 board of canvassers shall file each statement and determination in the office of the
4 municipal clerk or board of election commissioners.

5 **SECTION 4.** 7.60 (3) of the statutes is amended to read:

6 7.60 (3) CANVASSING. Not later than 9 a.m. on the Tuesday after each election
7 the county board of canvassers shall open and publicly examine the returns, except
8 that, for a presidential election, the board of canvassers shall open and publicly
9 examine the returns not later than noon on the Saturday after the election. If returns
10 have not been received from any election district or ward in the county, they shall
11 dispatch a messenger and the person having them shall deliver the returns to the
12 messenger. If, on examination, any of the returns received are so informal or
13 defective that the board cannot intelligently canvass them, they shall dispatch a
14 messenger to deliver the returns back to the municipal board of canvassers with
15 written specifications of the informalities or defects and command them to
16 immediately complete the returns or remedy the defects in the manner required and
17 deliver them to the messenger. Every messenger shall safely keep all returns, show
18 them to no one but the municipal clerk and board of canvassers and deliver them to
19 the county clerk with all possible dispatch. To acquire the necessary full returns and
20 remedy any informalities or defects the county board of canvassers may adjourn not
21 longer than one day at a time nor more than 2 days in all, except that, for a
22 presidential election, the board of canvassers may adjourn only to the extent
23 permitted by the commission.

24 **SECTION 5.** 7.60 (5) (a) of the statutes is amended to read:

1 7.60 (5) (a) Immediately following the canvass, the county clerk shall deliver
2 or transmit to the elections commission a certified copy of each statement of the
3 county board of canvassers for president and vice president, state officials, senators
4 and representatives in congress, state legislators, justice, court of appeals judge,
5 circuit judge, district attorney, and metropolitan sewerage commissioners, if the
6 commissioners are elected under s. 200.09 (11) (am). The statement shall record the
7 returns for each office or referendum by ward, unless combined returns are
8 authorized under s. 5.15 (6) (b) in which case the statement shall record the returns
9 for each group of combined wards. Following primaries the county clerk shall enclose
10 on forms prescribed by the elections commission the names, party or principle
11 designation, if any, and number of votes received by each candidate recorded in the
12 same manner. The county clerk shall deliver or transmit the certified statement to
13 the elections commission no later than 9 days after each primary except the partisan
14 primary, no later than 10 days after the partisan primary and any other election
15 except the general election, and no later than 14 days after the general election
16 except a presidential election. The county clerk shall deliver or transmit the certified
17 statement to the elections commission no later than 6 days after a presidential
18 election. The board of canvassers shall deliver or transmit a certified copy of each
19 statement for any technical college district referendum to the secretary of the
20 technical college district board.

21 **SECTION 6.** 7.70 (1) (b) of the statutes is amended to read:

22 7.70 (1) (b) If any county clerk fails or neglects to forward any statements, the
23 commission may require the clerk to do so immediately and if not received by the 8th
24 day after a primary, by the 7th day after a presidential election, or by the 11th day
25 after any other election, the commission may dispatch a special messenger to obtain

1 them. Whenever it appears upon the face of any statement that an error has been
2 made in reporting or computing, the commission may return it to the county clerk
3 for correction.

4 **SECTION 7.** 7.70 (3) (a) of the statutes is amended to read:

5 7.70 (3) (a) The Except for a presidential election, the chairperson of the
6 commission or a designee of the chairperson appointed by the chairperson to canvass
7 a specific election shall publicly canvass the returns and make his or her
8 certifications and determinations on or before the 2nd Tuesday following a spring
9 primary; the 15th day of May following a spring election; the 3rd Wednesday
10 following a partisan primary; the first day of December following a general election;
11 the 2nd Thursday following a special primary; or within 18 days after any special
12 election.

13 **SECTION 8.** 7.70 (3) (c) of the statutes is amended to read:

14 7.70 (3) (c) The Except for a presidential election, the chairperson of the
15 commission or the chairperson's designee shall conclude the state canvass within 10
16 days after its commencement.

17 **SECTION 9.** 7.70 (3) (cm) of the statutes is created to read:

18 7.70 (3) (cm) For a presidential election, the chairperson of the commission or
19 the chairperson's designee shall conclude the state canvass and make his or her
20 certifications and determinations no later than 16 days after the date of the
21 presidential election.

22 **SECTION 10.** 7.70 (5) (b) of the statutes is amended to read:

23 7.70 (5) (b) For presidential electors, the commission shall prepare a certificate
24 of ascertainment showing the determination of the results of the canvass and the
25 names of the persons elected, and the governor shall sign, affix the great seal of the

1 state, and transmit the certificate as soon as possible by registered mail the most
2 secure and expeditious method available to the U.S. ~~administrator of general~~
3 ~~services~~ archivist of the United States. The certificate shall contain at least one
4 security feature, as determined by the governor, for the purpose of verifying the
5 authenticity of the certificate. The secure components of any security feature used
6 to verify the authenticity of a certificate are confidential and not subject to disclosure
7 under s. 19.35. The governor shall transmit the certificate no later than 36 days
8 following the general election. The governor shall also prepare 6 duplicate originals
9 of such certificate and deliver them to one of the presidential electors on or before the
10 first ~~Monday~~ Tuesday after the 2nd Wednesday in December.

11 **SECTION 11.** 7.75 (1) of the statutes is amended to read:

12 7.75 (1) The electors for president and vice president shall meet at the state
13 capitol following the presidential election at 12:00 noon the first ~~Monday~~ Tuesday
14 after the 2nd Wednesday in December or at the time directed by federal law. If there
15 is a vacancy in the office of an elector due to death, refusal to act, failure to attend
16 or other cause, the electors present shall immediately proceed to fill by ballot, by a
17 plurality of votes, the electoral college vacancy. When all electors are present, or the
18 vacancies filled, they shall perform their required duties under the constitution and
19 laws of the United States.

20 **SECTION 12.** 9.01 (1) (ar) 3. of the statutes is amended to read:

21 9.01 (1) (ar) 3. ~~Whenever~~ Except as provided in subd. 4., whenever a clerk
22 receives a valid petition and any payment under par. (ag) 3., the clerk shall
23 thereupon notify the proper board of canvassers. Whenever the commission receives
24 a valid petition and any payment under par. (ag) 3., the commission shall promptly
25 by certified mail or other expeditious means order the proper county boards of

1 canvassers to commence the recount. County boards of canvassers shall convene no
2 later than 9 a.m. on the 3rd day after receipt of an order and may adjourn for not more
3 than one day at a time until the recount is completed in the county, except that the
4 commission may permit extension of the time for adjournment. Returns from a
5 recount ordered by the commission shall be transmitted to the office of the
6 commission as soon as possible, but in no case later than 13 days from the date of the
7 order of the commission directing the recount. The commission chairperson or the
8 chairperson's designee may not make a determination in any election if a recount is
9 pending before any county board of canvassers in that election. The commission
10 chairperson or the chairperson's designee need not recount actual ballots, but shall
11 verify the returns of the county boards of canvassers in making his or her
12 determinations.

13 **SECTION 13.** 9.01 (1) (ar) 4. of the statutes is created to read:

14 9.01 (1) (ar) 4. In the event of a recount for a presidential election, whenever
15 the commission receives a valid petition and any payment under par. (ag) 3., the
16 commission shall immediately, on the same day on which the commission receives
17 the petition and payment, order the proper county boards of canvassers to commence
18 the recount. The commission shall send the order by email or other electronic
19 transmission. County boards of canvassers shall convene no later than 9 a.m. on the
20 2nd day after the receipt of an order and may not adjourn until the recount is
21 completed in the county, except to the extent permitted by the commission. Returns
22 from a recount ordered by the commission under this subdivision shall be
23 transmitted to the office of the commission as soon as possible but in no case later
24 than 5 days from the date of the order directing the recount. The commission
25 chairperson or the chairperson's designee may not make a determination in the

1 presidential election if a recount of the presidential election is pending before any
2 county board of canvassers for that election. The commission chairperson or the
3 chairperson's designee need not recount actual ballots but shall verify the returns
4 of the county boards of canvassers in making his or her determination.

5 **SECTION 14.** 9.01 (6) (a) of the statutes is amended to read:

6 9.01 (6) (a) ~~Within~~ Except as provided in par. (am), within 5 business days after
7 completion of the recount determination by the board of canvassers in all counties
8 concerned, or within 5 business days after completion of the recount determination
9 by the commission chairperson or the chairperson's designee whenever a
10 determination is made by the chairperson or designee, any candidate, or any elector
11 when for a referendum, aggrieved by the recount may appeal to circuit court. The
12 appeal shall commence by serving a written notice of appeal on the other candidates
13 and persons who filed a written notice of appearance before each board of canvassers
14 whose decision is appealed, or in the case of a statewide recount, before the
15 commission chairperson or the chairperson's designee. The appellant shall also
16 serve notice on the commission if the commission chairperson or the chairperson's
17 designee is responsible for determining the election. The appellant shall serve the
18 notice by certified mail or in person. The appellant shall file the notice with the clerk
19 of circuit court together with an undertaking and surety in the amount approved by
20 the court, conditioned upon the payment of all costs ~~taxed~~ assessed against the
21 appellant.

22 **SECTION 15.** 9.01 (6) (am) of the statutes is created to read:

23 9.01 (6) (am) With regard to a presidential election, within one business day
24 after the completion of the recount determination by the commission chairperson or
25 the chairperson's designee whenever a determination is made by the chairperson or

1 designee, any candidate aggrieved by the recount may appeal to circuit court. The
2 appeal shall commence by serving a written notice of appeal on the other candidates
3 who filed a written notice of appearance before each board of canvassers whose
4 decision is appealed or, in the case of a statewide recount, before the commission
5 chairperson or the chairperson's designee. The appellant shall also serve notice on
6 the commission if the commission chairperson or the chairperson's designee is
7 responsible for determining the election. The appellant shall serve the notice by
8 certified mail or in person. The appellant shall file the notice with the clerk of circuit
9 court together with an undertaking and surety in the amount approved by the court,
10 conditioned upon the payment of all costs assessed against the appellant.

11 **SECTION 16.** 9.01 (6) (b) of the statutes is amended to read:

12 9.01 (6) (b) If an appeal is filed from a recount determination in an election
13 which is held in more than one judicial circuit, the chief judge of the judicial
14 administrative district in which the election is held shall consolidate all appeals
15 relating to that election and appoint a circuit judge, who shall be a reserve judge if
16 available, to hear the appeal. If the election is held in more than one judicial
17 administrative district, the chief justice of the supreme court shall make the
18 appointment. In any year in which there is a presidential election, the chief justice
19 of the supreme court shall, on the first Monday in November, appoint a circuit judge,
20 who shall be a reserve judge if available, to hear any appeals under this section,
21 except as provided under sub. (9) (am).

22 **SECTION 17.** 9.01 (7) (b) of the statutes is amended to read:

23 9.01 (7) (b) The appeal shall be heard by a judge without a jury. Promptly
24 following the filing of an appeal, the court shall hold a scheduling conference for the
25 purpose of adopting procedures that will permit the court to determine the matter

1 as expeditiously as possible. For an appeal regarding a presidential election, the
2 court shall determine the matter no later than 10 days after the day on which the
3 appeal is filed. Within the time ordered by the court, the appellant shall file a
4 complaint enumerating with specificity every alleged irregularity, defect, mistake or
5 fraud committed during the recount. The appellant shall file a copy of the complaint
6 with each person who is entitled to receive a copy of the order under par. (a). Within
7 the time ordered by the court, the other parties to the appeal shall file an answer.
8 Within the time ordered by the court, the parties to the appeal shall provide the court
9 with any other information ordered by the court. At the time and place ordered by
10 the court, the matter shall be summarily heard and determined and costs shall be
11 taxed as in other civil actions. Those provisions of chs. 801 to 806 which are
12 inconsistent with a prompt and expeditious hearing do not apply to appeals under
13 this section.

14 **SECTION 18.** 9.01 (9) (a) of the statutes is amended to read:

15 9.01 (9) (a) ~~Within~~ Except as provided in par. (am), within 30 days after entry
16 of the order of the circuit court, a party aggrieved by the order may appeal to the court
17 of appeals.

18 **SECTION 19.** 9.01 (9) (am) of the statutes is created to read:

19 9.01 (9) (am) With regard to a presidential election, no later than one calendar
20 day after entry of the order of the circuit court, a party aggrieved by the order may
21 appeal to the supreme court. The sole and exclusive remedy for review of any
22 decision or order of the circuit court with regard to a presidential election shall be
23 by appeal to the supreme court.

24 **SECTION 20.** 9.01 (9) (cm) of the statutes is created to read:

