



State of Wisconsin
2019 - 2020 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 636**

January 15, 2020 - Offered by Representative VORPAGEL.

1 **AN ACT to amend** 5.84 (1), 5.86 (1), 6.15 (4) (b), 6.86 (1) (b), 6.87 (6), 6.88 (1), 6.88
2 (3) (a) and 7.52 (1) (a); and **to create** 6.91, 7.52 (10) and 7.525 of the statutes;
3 **relating to:** early canvassing of absentee ballots and providing a penalty.

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 on the day 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. The ordinance may not take effect without the approval of the Elections Commission.

3. Early canvassing of absentee ballots under the bill may be conducted only between 7 a.m. and 8 p.m. on the day before the election, and ballots may not be tallied until after polls close 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.

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. 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.

7. Certain notices must be provided before each election at which the municipality intends to canvass absentee ballots on the day before the election.

Under the bill, if a municipality passes an ordinance authorizing the early canvassing of absentee ballots, the municipal clerk or municipal board of election commissioners may elect to canvass ballots early for any particular election, except as otherwise provided in the ordinance.

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.

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

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

2 5.84 (1) Where any municipality employs an electronic voting system which
3 utilizes automatic tabulating equipment, ~~either at the polling place or at a central~~
4 ~~counting location,~~ the municipal clerk shall, on any day not more than 10 days prior
5 to the election day on which the equipment is to be utilized in an election, have the
6 equipment tested to ascertain that it will correctly count the votes cast for all offices
7 and on all measures. Public notice of the time and place of the test shall be given by
8 the clerk at least 48 hours prior to the test by publication of a class 1 notice under
9 ch. 985 in one or more newspapers published within the municipality if a newspaper
10 is published therein, otherwise in a newspaper of general circulation therein. The
11 test shall be open to the public. The test shall be conducted by processing a
12 preaudited group of ballots so marked as to record a predetermined number of valid
13 votes for each candidate and on each referendum. The test shall include for each

1 office one or more ballots which have votes in excess of the number allowed by law
2 and, for a partisan primary election, one or more ballots which have votes cast for
3 candidates of more than one recognized political party, in order to test the ability of
4 the automatic tabulating equipment to reject such votes. If any error is detected, the
5 municipal clerk shall ascertain the cause and correct the error. The clerk shall make
6 an errorless count before the automatic tabulating equipment is approved by the
7 clerk for use in the election.

8 **SECTION 2.** 5.86 (1) of the statutes is amended to read:

9 5.86 (1) All proceedings at each central counting location shall be under the
10 direction of the municipal clerk or an election official designated by the clerk unless
11 the central counting location is at the county seat ~~and the municipal clerk delegates~~
12 ~~the responsibility to supervise the location to the county clerk~~, in which case the
13 proceedings shall be under the direction of the county clerk or an election official
14 designated by the county clerk. If for any municipality the central counting location
15 is at the county seat and the municipality authorizes or elects the early canvassing
16 of absentee ballots under s. 7.525, the county clerk or the county clerk's designee
17 shall begin the proceedings for that municipality on the day before the election
18 consistent with that section. Unless election officials are selected under s. 7.30 (4)
19 (c) without regard to party affiliation, the employees at each central counting
20 location, other than any specially trained technicians who are required for the
21 operation of the automatic tabulating equipment, shall be equally divided between
22 members of the 2 major political parties under s. 7.30 (2) (a) and all duties performed
23 by the employees shall be by teams consisting of an equal number of members of each
24 political party whenever sufficient persons from each party are available.

25 **SECTION 3.** 6.15 (4) (b) of the statutes is amended to read:

1 6.15 (4) (b) During polling hours, or between 7 a.m. and 8 p.m. on the day before
2 the election if authorized or elected for that election under s. 7.525, the inspectors
3 shall open each carrier envelope, announce the elector's name, check the affidavit for
4 proper execution, and check the voting qualifications for the ward, if any. In
5 municipalities where absentee ballots are canvassed under s. 7.52, the municipal
6 board of absentee ballot canvassers shall perform this function at a meeting of the
7 board of absentee ballot canvassers.

8 **SECTION 4.** 6.86 (1) (b) of the statutes is amended to read:

9 6.86 (1) (b) Except as provided in this section, if application is made by mail,
10 the application shall be received no later than 5 p.m. on the 5th day immediately
11 preceding the election. If application is made in person, the application shall be
12 made no earlier than 14 days preceding the election and no later than the Sunday
13 preceding the election. No application may be received on a legal holiday. A
14 municipality shall specify the hours in the notice under s. 10.01 (2) (e). The
15 municipal clerk or an election official shall witness the certificate for any in-person
16 absentee ballot cast. Except as provided in par. (c), if the elector is making written
17 application for an absentee ballot at the partisan primary, the general election, the
18 presidential preference primary, or a special election for national office, and the
19 application indicates that the elector is a military elector, as defined in s. 6.34 (1), the
20 application shall be received by the municipal clerk no later than 5 p.m. on election
21 day. If the application indicates that the reason for requesting an absentee ballot is
22 that the elector is a sequestered juror, the application shall be received no later than
23 5 p.m. on election day. If the application is received after 5 p.m. on the Friday
24 immediately preceding the election, the municipal clerk or the clerk's agent shall
25 immediately take the ballot to the court in which the elector is serving as a juror and

1 deposit it with the judge. The judge shall recess court, as soon as convenient, and
2 give the elector the ballot. The judge shall then witness the voting procedure as
3 provided in s. 6.87 and shall deliver the ballot to the clerk or agent of the clerk who
4 shall deliver it to the ~~polling place~~ election inspectors of the proper ward or election
5 district or, in municipalities where absentee ballots are canvassed under s. 7.52, to
6 the municipal clerk as required in s. 6.88. If application is made under sub. (2) or
7 (2m), the application may be received no later than 5 p.m. on the Friday immediately
8 preceding the election.

9 **SECTION 5.** 6.87 (6) of the statutes is amended to read:

10 6.87 (6) The ballot shall be returned so it is delivered to the ~~polling place~~
11 election inspectors of the proper ward or election district no later than 8 p.m. on
12 election day. Except in municipalities where absentee ballots are canvassed under
13 s. 7.52, if the municipal clerk receives an absentee ballot on election day, the clerk
14 shall secure the ballot and cause the ballot to be delivered to the polling place serving
15 the elector's residence before 8 p.m. Any ballot not mailed or delivered as provided
16 in this subsection may not be counted.

17 **SECTION 6.** 6.88 (1) of the statutes is amended to read:

18 6.88 (1) When an absentee ballot arrives at the office of the municipal clerk,
19 or at an alternate site under s. 6.855, if applicable, the clerk shall enclose it,
20 unopened, in a carrier envelope which shall be securely sealed and endorsed with the
21 name and official title of the clerk, and the words "This envelope contains the ballot
22 of an absent elector and must be opened ~~in the same room where votes are being cast~~
23 ~~at the polls during polling hours on election day or, in municipalities where absentee~~
24 ~~ballots are canvassed under s. 7.52, stats., at a meeting of the municipal board of~~
25 ~~absentee ballot canvassers under s. 7.52, stats~~ only as provided by law." If the elector

1 is a military elector, as defined in s. 6.34 (1), or an overseas elector, regardless of
2 whether the elector qualifies as a resident of this state under s. 6.10, and the ballot
3 was received by the elector by facsimile transmission or electronic mail and is
4 accompanied by a separate certificate, the clerk shall enclose the ballot in a
5 certificate envelope and securely append the completed certificate to the outside of
6 the envelope before enclosing the ballot in the carrier envelope. The clerk shall keep
7 the ballot in the clerk's office or at the alternate site, if applicable until delivered, as
8 required in sub. (2).

9 **SECTION 7.** 6.88 (3) (a) of the statutes is amended to read:

10 6.88 (3) (a) Except in municipalities where absentee ballots are canvassed
11 under s. 7.52, at any time between the opening and closing of the polls on election day,
12 or between 7 a.m. and 8 p.m. on the day before the election if authorized or elected
13 for that election under s. 7.525, the inspectors shall, in the same room where votes
14 are being cast, or in the place where absentee ballots begin being canvassed early
15 under s. 7.525, in such a manner that members of the public can hear and see the
16 procedures, open the carrier envelope only, and announce the name of the absent
17 elector or the identification serial number of the absent elector if the elector has a
18 confidential listing under s. 6.47 (2). When the inspectors find that the certification
19 has been properly executed, the applicant is a qualified elector of the ward or election
20 district, and the applicant has not voted in the election, they shall enter an indication
21 on the poll list next to the applicant's name indicating an absentee ballot is cast by
22 the elector. They shall then open the envelope containing the ballot in a manner so
23 as not to deface or destroy the certification thereon. The inspectors shall take out the
24 ballot without unfolding it or permitting it to be unfolded or examined. Unless the
25 ballot is cast under s. 6.95, the inspectors shall verify that the ballot has been

1 endorsed by the issuing clerk. If the poll list indicates that proof of residence under
2 s. 6.34 is required and proof of residence is enclosed, the inspectors shall enter both
3 the type of identifying document submitted by the absent elector and the name of the
4 entity or institution that issued the identifying document on the poll list in the space
5 provided. If the poll list indicates that proof of residence under s. 6.34 is required and
6 no proof of residence is enclosed or the name or address on the document that is
7 provided is not the same as the name and address shown on the poll list, the
8 inspectors shall proceed as provided under s. 6.97 (2). The inspectors shall then
9 deposit the ballot into the proper ballot box and enter the absent elector's name or
10 voting number after his or her name on the poll list in the same manner as if the
11 elector had been present and voted in person.

12 **SECTION 8.** 6.91 of the statutes is created to read:

13 **6.91 Place for challenging an elector.** The vote of any voter, including an
14 absent voter, may be challenged as provided under this subchapter at the polling
15 place, at the municipal clerk's office, at an in-person absentee voting location during
16 the period for making an in-person application for an absentee ballot under s. 6.86
17 (1) (b), at a location where the early canvassing of absentee ballots is being conducted
18 under s. 7.525, or at a central count location.

19 **SECTION 9.** 7.52 (1) (a) of the statutes is amended to read:

20 7.52 (1) (a) The governing body of any municipality may provide by ordinance
21 that, in lieu of canvassing absentee ballots at polling places under s. 6.88, the
22 municipal board of absentee ballot canvassers designated under s. 7.53 (2m) shall,
23 at each election held in the municipality, canvass all absentee ballots received by the
24 municipal clerk by 8 p.m. on election day. Prior to enacting an ordinance under this
25 subsection, the municipal clerk or board of election commissioners of the

1 municipality shall notify the elections commission in writing of the proposed
2 enactment and shall consult with the elections commission concerning
3 administration of this section. At every election held in the municipality following
4 enactment of an ordinance under this subsection, the board of absentee ballot
5 canvassers shall, any time after the opening of the polls, or between 7 a.m. and 8 p.m.
6 on the day before the election if authorized or elected for that election under s. 7.525,
7 and before 10 p.m. on election day, publicly convene to count the absentee ballots for
8 the municipality. The municipal clerk shall give at least 48 hours' notice of any
9 meeting under this subsection. Any member of the public has the same right of
10 access to a meeting of the municipal board of absentee ballot canvassers under this
11 subsection that the individual would have under s. 7.41 to observe the proceedings
12 at a polling place. The board of absentee ballot canvassers may order the removal
13 of any individual exercising the right to observe the proceedings if the individual
14 disrupts the meeting.

15 **SECTION 10.** 7.52 (10) of the statutes is created to read:

16 7.52 (10) If, subject to s. 7.525, absentee ballots begin being canvassed under
17 this section on the day before the election, no action under subs. (4) to (8) may be
18 performed before election day.

19 **SECTION 11.** 7.525 of the statutes is created to read:

20 **7.525 Early canvassing of absentee ballots. (1) ORDINANCE AUTHORIZING**
21 **EARLY CANVASSING; REQUIREMENTS.** (a) 1. The governing body of any municipality that
22 uses automatic tabulating equipment to process absentee ballots may provide by
23 ordinance that absentee ballots received by the municipal clerk may begin being
24 canvassed on the day before the election. Unless the ordinance provides otherwise,

1 the municipal clerk or municipal board of election commissioners may elect to begin
2 canvassing ballots early under this section in any election.

3 2. Prior to enacting an ordinance under subd. 1., the municipal clerk or
4 municipal board of election commissioners shall notify the elections commission in
5 writing of the proposed enactment and shall consult with the elections commission
6 concerning administration of this section. No ordinance under subd. 1. may take
7 effect unless approved by the elections commission.

8 (b) Ballots may be canvassed early under this section only between 7 a.m. and
9 8 p.m. on the day before the election and may not be tallied until after the polls close
10 on election day.

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

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

18 (e) No person may act in any manner that would give him or her the ability to
19 know or to provide information on the accumulating or final results from the ballots
20 canvassed early under this section before the close of the polls on election day. A
21 person who violates this paragraph is guilty of a Class I felony.

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

24 (a) At least 70 days before the election the municipal clerk or executive director
25 of the municipal board of election commissioners notifies in writing the county clerk

1 or executive director of the county board of election commissioners that early
2 canvassing of absentee ballots will take place in the election.

3 (b) The notice under s. 10.01 (2) (e) specifies the date and time during which,
4 and each location where, the early canvassing of absentee ballots will be conducted.

5 **SECTION 12. Initial applicability.**

6 (1) This act first applies to the August 11, 2020, primary election.

7 (END)