



State of Wisconsin
2021 - 2022 LEGISLATURE

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2021 ASSEMBLY BILL 310

May 4, 2021 - Introduced by Representatives TAUCHEN, GUNDRUM and LOUDENBECK, cosponsored by Senators STAFSHOLT, STROEBEL, DARLING and FEYEN. Referred to Committee on Campaigns and Elections.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 8.20 (8) (am); *to amend* 5.25 (2), 5.84 (1), 7.15 (1) (cm), 7.52
2 (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
3 (1) (d) to (g) and 7.52 (10) of the statutes; **relating to:** early canvassing of
4 absentee ballots, issuance of presidential ballots, combined polling places,
5 timeline for sending or transmitting absentee ballots, nomination papers for
6 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.

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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 and then adjourns 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.

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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:

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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.

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

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

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

8 **SECTION 2.** 5.84 (1) of the statutes is amended to read:

9 5.84 (1) Where any municipality employs an electronic voting system which
10 utilizes automatic tabulating equipment, ~~either at the polling place or at a central~~
11 ~~counting location,~~ the municipal clerk shall, on any day not more than 10 days prior
12 to the ~~election~~ day on which the equipment is to be utilized in an election, have the
13 equipment tested to ascertain that it will correctly count the votes cast for all offices
14 and on all measures. Public notice of the time and place of the test shall be given by
15 the clerk at least 48 hours prior to the test by publication of a class 1 notice under
16 ch. 985 in one or more newspapers published within the municipality if a newspaper
17 is published therein, otherwise in a newspaper of general circulation therein. The
18 test shall be open to the public. The test shall be conducted by processing a

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

10 **SECTION 3.** 6.19 of the statutes is created to read:

11 **6.19 Presidential ballots. (1)** In this section, “presidential ballot” means a
12 ballot that allows an elector to vote only for candidates for president and vice
13 president.

14 **(2)** No election inspector or other election official may provide a presidential
15 ballot to an elector for voting at a presidential election, except as provided under ss.
16 6.15 and 6.18.

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

18 7.15 (1) (cm) Prepare official absentee ballots for delivery to electors requesting
19 them; and ~~except as provided in this paragraph,~~ send an official absentee ballot to
20 ~~each elector who has requested a ballot by mail, and to each military elector, as~~
21 ~~defined in s. 6.34 (1), and overseas elector who has requested a ballot by mail,~~
22 ~~electronic mail, or facsimile transmission, no later than the 47th 45th day before~~
23 ~~each partisan primary, presidential preference primary, special primary or election,~~
24 ~~and general election and no later than the 21st day before each other primary and~~
25 ~~election if the request is made before that day; otherwise, the municipal clerk shall~~

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1 send or transmit an official absentee ballot within one business day of the time the
2 military or overseas elector's request for such a ballot is received. The clerk shall
3 send or transmit an absentee ballot ~~for the presidential preference primary to each~~
4 ~~elector who has requested that~~ to all other electors requesting a ballot no later than
5 the ~~47th~~ 21st day before the ~~presidential preference primary~~ or election if the request
6 is made before that day, or, if the request is not made before that day, within one
7 business day of the time the request is received. For purposes of this paragraph,
8 "business day" means any day from Monday to Friday, not including a legal holiday
9 under s. 995.20.

10 **SECTION 5.** 7.52 (1) (a) of the statutes is amended to read:

11 7.52 (1) (a) The governing body of any municipality may provide by ordinance
12 that, in lieu of canvassing absentee ballots at polling places under s. 6.88, the
13 municipal board of absentee ballot canvassers designated under s. 7.53 (2m) shall,
14 at each election held in the municipality, canvass all absentee ballots received by the
15 municipal clerk by 8 p.m. on election day. Prior to enacting an ordinance under this
16 subsection, the municipal clerk or board of election commissioners of the
17 municipality shall notify the elections commission in writing of the proposed
18 enactment and shall consult with the elections commission concerning
19 administration of this section. At every election held in the municipality following
20 enactment of an ordinance under this subsection, the board of absentee ballot
21 canvassers shall, ~~any time after the opening of the polls and before 10 p.m. on election~~
22 ~~day,~~ publicly convene a meeting no earlier than 7 a.m. on the day before the election
23 nor later than 10 p.m. on election day to count the absentee ballots for the
24 municipality. The meeting shall continue until all absentee ballots received by the
25 municipal clerk by 8 p.m. on election day have been counted, except that, if the

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1 meeting convenes on the day before the election, the meeting shall adjourn no later
2 than 10 p.m. that day and shall reconvene no earlier than 7 a.m. on election day. The
3 municipal clerk shall give at least 48 hours' notice of ~~any~~ the meeting under this
4 subsection. Any member of the public has the same right of access to a meeting of
5 the municipal board of absentee ballot canvassers under this subsection that the
6 individual would have under s. 7.41 to observe the proceedings at a polling place. The
7 board of absentee ballot canvassers may order the removal of any individual
8 exercising the right to observe the proceedings if the individual disrupts the meeting.

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

10 7.52 (1) (d) At least daily while ballots are being canvassed under this section,
11 the municipal clerk or his or her designee shall post, at his or her office and on the
12 Internet at a site announced by the clerk before canvassing begins, and shall make
13 available to any person upon request, a statement that shows the number of absentee
14 ballots that the board of absentee ballot canvassers has canvassed and the number
15 of absentee ballots remaining to be canvassed. The posting may not include the
16 names or addresses of any electors.

17 (e) If the meeting of the board of absentee ballot canvassers adjourns on the day
18 before the election, as provided under par. (a), the board of absentee ballot canvassers
19 shall secure the automatic tabulating equipment, and the areas where the
20 programmed media, memory devices, and absentee ballots are housed, with
21 tamper-evident security seals in a double-lock location such as a locked cabinet
22 inside a locked office. Before resuming the canvassing of ballots on election day, the
23 board of absentee ballot canvassers shall check and record the status of each
24 tamper-evident seal. The clerk of the board of absentee ballot canvassers shall
25 immediately notify the commission of any evidence of tampering. If the board of

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1 absentee ballot canvassers discovers evidence of tampering with respect to
2 automatic tabulating equipment, the canvass may not resume until after the
3 equipment is replaced and tested as provided in s. 5.84 (1). If the board of absentee
4 ballot canvassers discovers evidence of tampering under this paragraph, after the
5 election, the municipality shall conduct a recount in the manner provided under s.
6 9.01 and audit the election equipment to verify the accuracy of the absentee ballot
7 count in the municipality in the election.

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

10 (g) No person may intentionally act in a manner that would give him or her the
11 ability to know or to provide information on the accumulating or final results from
12 the ballots canvassed under this section before the canvass is complete or before the
13 polls close on election day, whichever is later. Whoever intentionally violates this
14 paragraph is guilty of a Class I felony.

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

16 7.52 (2) In counting the absentee ballots, the board of absentee ballot
17 canvassers shall use 2 duplicate copies of a single absentee poll list for the entire
18 municipality prepared in accordance with s. 6.36 (2). Upon ~~accepting~~ reviewing each
19 absentee ballot certificate envelope to ensure that it satisfies all applicable legal
20 requirements, the board of absentee ballot canvassers shall enter a ~~poll list~~
21 sequential count number on the absentee poll list next to the name of the elector who
22 voted the ballot, beginning with the number one. If the elector's name does not
23 appear on the absentee poll list, the board of absentee ballot canvassers shall enter
24 the number on a separate list maintained under this subsection. The board of

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1 absentee ballot canvassers shall record each elector's sequential count number on
2 the face of the elector's certificate envelope.

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

4 7.52 (3) (a) The board of absentee ballot canvassers shall first open the carrier
5 envelope only, and, in such a manner that a member of the public, if he or she desired,
6 could hear, announce the name of the absent elector or the identification serial
7 number of the absent elector if the elector has a confidential listing under s. 6.47 (2).
8 When the board of absentee ballot canvassers finds that the certification has been
9 properly executed and the applicant is a qualified elector of the ward or election
10 district, the board of absentee ballot canvassers shall enter an indication, including
11 the elector's sequential count number as provided under sub. (2), on the absentee poll
12 list next to the applicant's name indicating an absentee ballot is cast by the elector.
13 The board of absentee ballot canvassers shall then open the envelope containing the
14 ballot in a manner so as not to deface or destroy the certification thereon. ~~The board~~
15 ~~of absentee ballot canvassers shall take out the ballot without unfolding it or~~
16 ~~permitting it to be unfolded or examined~~ and shall remove the ballot from the
17 certificate envelope. Unless the ballot is cast under s. 6.95, the board of absentee
18 ballot canvassers shall verify that the ballot has been endorsed by the issuing clerk.
19 If the absentee poll list indicates that proof of residence is required and no proof of
20 residence is enclosed or the name or address on the document that is provided is not
21 the same as the name and address shown on the absentee poll list, the board of
22 absentee ballot canvassers shall proceed as provided under s. 6.97 (2). ~~The board of~~
23 ~~absentee ballot canvassers shall mark the poll list number of each elector who casts~~
24 ~~an absentee ballot on the back of the elector's ballot.~~ The board of absentee ballot
25 canvassers shall then deposit the ballot into the proper ballot box ~~and enter the~~

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1 ~~absent elector's name or poll list number after his or her name on the poll list or~~
2 ~~automatic tabulating equipment.~~

3 **SECTION 9.** 7.52 (4) (a) of the statutes is amended to read:

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

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

15 7.52 (10) A member of the board of absentee ballot canvassers or other election
16 official who willfully neglects or refuses to perform any of the duties prescribed under
17 this section is guilty of a Class I felony.

18 **SECTION 11.** 8.20 (8) (a) of the statutes is amended to read:

19 8.20 (8) (a) Nomination papers for independent candidates for any office to be
20 voted upon at a general election, ~~except president, vice president and presidential~~
21 ~~elector,~~ may be circulated no sooner than April 15 preceding the election and may be
22 filed no later than 5 p.m. on the June 1 preceding the partisan primary, except as
23 authorized in this paragraph. If an incumbent fails to file nomination papers and
24 a declaration of candidacy by 5 p.m. on June 1 preceding the partisan primary, all
25 candidates for the office held by the incumbent, other than the incumbent, may file

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1 nomination papers no later than 72 hours after the latest time prescribed in this
2 paragraph. No extension of the time for filing nomination papers applies if the
3 incumbent files written notification with the filing officer or agency with whom
4 nomination papers are filed for the office which the incumbent holds, no later than
5 5 p.m. on the 2nd Friday preceding the latest time prescribed in this paragraph for
6 filing nomination papers, that the incumbent is not a candidate for reelection to his
7 or her office, and the incumbent does not file nomination papers for that office within
8 the time prescribed in this paragraph.

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

10

(END)