

Meeting of the Board
Friday, June 8, 2012
9:00 A.M.

Agenda
Open Session

Room 412 East, State Capitol
Madison, Wisconsin

Friday, June 8, 2012

9:00 A.M.

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A. Call to Order	
B. Director’s Report of Appropriate Meeting Notice	
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D. Personal Appearances from Members of the Public (Initial Appearances will be limited to Comments on Ballot Access)	
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F. Ballot Access Challenges	
G. Ballot Access Issues	
H. Public Comment	
I. Director’s Report	Oral Report
1. Elections Division Report – election administration.	
2. Ethics and Accountability Division Report – campaign finance, ethics, and lobbying administration.	
3. Office of General Counsel Report – general administration.	
J. Closed Session	

- 5.05 (6a) and 19.85 (1) (h) The Board’s deliberations on requests for advice under the ethics code, lobbying law, and campaign finance law shall be in closed session.
- 19.85 (1) (g) The Board may confer with legal counsel concerning litigation strategy.

The Government Accountability Board may conduct a roll call vote, a voice vote, or otherwise decide to approve, reject, or modify any item on this agenda.

19.85 (1) (c) The Board may consider performance evaluation data of a public employee over which it exercises responsibility.

The Government Accountability Board has scheduled its next meeting for Tuesday, August 28, 2012 at the Government Accountability Board offices, 212 East Washington Avenue, Third Floor in Madison, Wisconsin beginning at 9:00 a.m.

State of Wisconsin\Government Accountability Board

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JUDGE DAVID G. DEININGER
Chair

KEVIN J. KENNEDY
Director and General Counsel

Wisconsin Government Accountability Board

212 East Washington Avenue, Third Floor

Madison, Wisconsin

May 15, 2012

9:00 a.m.

Open Session Minutes

<u>Summary of Significant Actions Taken</u>	<u>Page</u>
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B. Approved Revised Central Count Absentee Guideline	4
C. Approved Scope Statement on Single Signer Recall Petitions, GAB 2.05 (8)	5
D. Approved Scope Statement on Use of Stickers on Student Identification Cards GAB 10.0x	6

Present: Judge David G. Deininger, Judge Michael Brennan, Judge Gerald C. Nichol, Judge Thomas H. Barland, Judge Thomas Cane and Judge Timothy Vocke

Staff present: Kevin Kennedy, Nathaniel E. Robinson, Jonathan Becker, Shane Falk, Michael Haas, Ross Hein, Sharrie Hauge, Jonathan Paliwal, Brian Bell and Reid Magney

A. Call to Order

Judge Deininger called the meeting to order at 9:00 a.m.

B. Director's Report of Appropriate Meeting Notice

Director and General Counsel Kevin Kennedy informed the Board that proper notice was given for the meeting.

Ethics and Accountability Division Administrator Jonathan Becker introduced two new employees in his division. Campaign Finance Auditor/Ethics Specialist Molly Sessler joins the Board from the Department of Children and Families, and Campaign Finance Auditor/Ethics Specialist Adam Harvell is a transfer from the Elections Division.

Elections Division Administrator Nathaniel E. Robinson introduced three new employees in his division. Elections Data Manager Brian Bell, a veteran and recipient of the Purple Heart, is a recent graduate of the University of Wisconsin's La Follette School of Public Affairs. Elections Specialist Jason Fischer joins the agency from the, Department of Workforce Development, and has experience in radio news. Colleen Adams comes from Minnesota, but has a Masters in Political Science from University of Wisconsin-Milwaukee.

C. Minutes of Previous Meetings

March 12, 2012 Meeting

March 20, 2012 Meeting

March 30, 2012 Meeting

April 17, 2012 Meeting

MOTION: Approve the Open Session minutes of the meetings of March 12, March 20, March 30, and April 17, 2012. Moved by Judge Barland, seconded by Judge Cane. Judge Vocke abstained from voting on all but the April 17 meeting minutes. Motion carried.

D. Personal Appearances from Members of the Public

Mary Ann Hanson of Brookfield appeared on her own behalf to express concerns about aspects of 2011 Wisconsin Act 23 involving curbside voting and signing of the poll book. She also expressed concern about the proposed guideline on central count absentee procedures

Ardis Cerny of Pewaukee appeared on her own behalf to comment on procedures for handling spoiled absentee ballots. She believes a voter must return a spoiled absentee ballot to receive a new one.

Bob Spindell of Milwaukee appeared on his own behalf to comment on problems with some election inspectors being too helpful to voters at the polling place which could border on electioneering.

Attorney James S. Mueller of Cross Plains appeared on behalf of Citizens for Election Protection to express concerns about fraud involving electronic voting equipment and discuss a University of California-Santa Barbara study on Edge voting machines. He encouraged the use of hand counted paper ballots.

Ed Smith of Denver appeared on behalf of Dominion Voting, where he is vice president of certification, to address concerns regarding the WinEDS software platform and voting system. He described problems encountered with the system in Florida and said it was a problem with the way the software was used, not with the software itself.

Discussion.

Bryan Bliss of Madison appeared on his own behalf to express concerns with the ES&S D-200 optical scan voting equipment, based on problems discovered in the State of New York.

E. Report on April 3, 2012 Presidential Preference – Spring Election and May 8, 2012 Recall Primary Election

Elections Division Administrator Nathaniel E. Robinson introduced Elections Supervisor Ross Hein and Elections Data Manager Brian Bell, who presented an oral and written report. Mr. Hein said the two main issues in the April 3 election were instances of poll worker errors that caused wrong ballot styles to be issued to some voters, and confusion about the enjoined status of the voter photo ID requirement. In the May 8 recall primary, the two major problems were questions about nomination petition signature collection outside polling places and over-votes because of confusion about crossover voting in the primaries for governor, lieutenant governor and state senator. Mr. Bell discussed call volumes to the Help Desk, and how data helped plan for extended hours to serve clerks and the public. Mr. Hein also discussed issues with absentee ballot delivery for non-military people who will be out of the state and unable to receive their ballot electronically due to recent legislation restricting the use of email and fax transmission.

Discussion.

G. Report on Verify the Recall Analysis

Staff Counsel Michael Haas and Assistant Staff Counsel Jonathan Paliwal presented an oral and written report. Mr. Haas said the standards Verify the Recall used for checking the validity of petition signatures were higher than allowed by state statutes, and would have eliminated legitimate signatures from the petitions. In addition, the lack of reliable quality control for data entry led to the organization discounting many valid signatures due to data entry errors by its volunteers. Staff's analysis of Verify the Recall's methodology validates the Board's decision not to partner with the group in analyzing the recall petitions.

Discussion.

H. Report on Concealed Carry Restrictions in the G.A.B. Offices and at Polling Places

Staff Counsel Haas presented an oral and written report, and noted that legal interns Matthew Giesfeldt and Blythe Kennedy drafted the majority of this memo. 2011 Wisconsin Act 35 allows Wisconsin residents to carry concealed weapons with a permit. The law also allows certain entities to prohibit persons from carrying a concealed weapon on property owned or controlled by the entity if it provides proper notice to visitors and patrons. The G.A.B. is permitted to prohibit firearms in its office.

Discussion about where signs might be posted and other details about implementation of a ban on concealed weapons in the G.A.B. offices.

Judge Nichol recounted his own experience on the bench of having an armed litigant outside his courtroom, and advocated having a safe environment for the staff.

Judge Vocke recounted his own experiences of losing a family member and others who might be alive if they had been allowed to carry a weapon for self-defense.

Judge Brennan recounted his own experience with gunshots fired outside a courthouse in Milwaukee County, and expressed concern that if weapons are allowed, somebody is going to get shot.

Judge Nichol said he would like the staff to make a recommendation to the Board at an upcoming meeting regarding weapons at Board offices. Judge Deininger noted that this is the consensus of the Board.

Mr. Haas continued to discuss the issue of concealed carry weapons at polling places and the analysis of staff's memo by the Department of Justice. He said DOJ is not certain about staff's analysis that elections qualify as "special events" as defined in the law; however, DOJ believes that when a municipality occupies a building for a polling place, the same rules apply as if it were municipal property. While a chief inspector has the right to order the removal of a person who creates a disturbance at a polling place, DOJ also wanted to make clear that under the law, having a weapon on one's person is not necessarily criminal disorderly conduct. Staff recommends that the municipal body make decisions regarding whether to ban concealed carry weapons at polling places, not the municipal clerk. He said it is important for municipalities to plan ahead for this issue. The Board directed staff to share that advice with municipal clerks and encourage them to work with their municipal attorney and governing body in making any decision related to conceal carry at the polling place.

Discussion.

Judge Deininger called a recess at 10:29 a.m. The Board reconvened at 10:48 a.m.

I. Proposed Revisions to Central Count Absentee Guideline

Staff Counsel Shane Falk presented an oral and written report. He said Wis. Stat. §6.86(6) was created by 2011 Wisconsin Act 227, which prohibits an elector from personally delivering or mailing an absentee ballot and voting in person at the same election on Election Day. This process affects the Central Count Absentee Guideline the Board previously adopted on December 13, 2011. That Guideline incorporated the statutory right and the Board's longstanding policy to permit an elector vote in person on Election Day, so long as the voter's absentee ballot had not been processed. The enactment of Wis. Stat. §6.86(6) impacts the whole absentee voting process and requires

a revision of the Central Count Absentee Guideline to take into account the impact of this statutory change.

Discussion of issues related to central counting of absentee ballots.

MOTION: Approve the draft revised Central Count Absentee Guideline, which incorporates procedural changes pursuant to 2011 Wisconsin Act 227, located starting on page 45 of the Board materials, and direct staff to incorporate more specific information on central count absentee processes in the Election Day Manual and G.A.B. training. Also, direct staff to notify all clerks, but specifically the clerks for municipalities with existing or considering central count absentee, that they shall forward copies of enabling ordinances and any written procedures for Central Count Absentee by May 25, 2012 for review by Board staff to ensure compliance with the Central Count Absentee Guidance and statutes. Moved by Judge Barland, seconded by Judge Cane. Motion carried unanimously.

J. Adoption of Guideline Relating to Scope of Campaign Finance Regulation

Ethics and Accountability Division Administrator Jonathan Becker presented an oral report regarding the proposed guideline on page 53 of the Board materials. The guideline gives information to the public and regulated community about the status of Admin Rule GAB 1.28, which was updated in August 2010, but shortly thereafter enjoined by the Wisconsin Supreme Court until March 19, 2012. He said that in the time since the proposed guideline was circulated with Board materials, staff has received some feedback and may wish to make minor changes prior to Board action.

Discussion regarding the history and litigation surrounding GAB 1.28.

Mr. Becker said the rule does not restrict anyone's free speech rights; but consistent with recent U.S. Supreme Court rules, it does require disclosure if people engage in speech within the scope of regulated activity.

No action was taken.

K. Administrative Rules

1. Approve Scope Statement on Single Signer Recall Petitions, GAB 2.05 (8)

Staff Counsel Haas gave an oral and written report. The Joint Committee on Review of Administrative Rules requested the Board promulgate a rule regarding single-signer recall petitions. He said the statement of scope has now been

approved by the governor, and the Board needs to give its approval before staff can begin drafting the rule.

Judge Barland raised an issue regarding what information a circulator may pre-fill on a petition. He asked that the rule contain a positive statement of what information can be pre-filled.

MOTION: Approve the proposed statement of scope beginning on page 56 of the Board materials for an emergency and permanent rule permitting the use of election petitions executed and signed by a single individual subject to the conditions described in the staff memo, and direct staff to prepare a proposed rule for the Board’s consideration at a future meeting. Moved by Judge Nichol, seconded by Judge Cane.

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deininger:	Aye
Nichol:	Aye	Vocke:	Nay

Motion carried.

2. Approve Scope Statement on Use of Stickers on Student Identification Cards GAB 10.0x

Staff Counsel Haas gave an oral and written report. Because this rule involves acceptable forms of photo ID that are currently enjoined from enforcement, he advised the Board should move forward with procedural steps in promulgation but hold off on final steps so as not to be effective unless the injunctions are lifted. Viterbo University and Beloit College were the only institutions considering use of stickers to make their ID cards compliant with the requirements in 2011 Wisconsin Act 23.

Discussion.

MOTION: Approve the proposed statement of scope for an emergency and permanent rule permitting the use of stickers on student identification cards for purposes of photo identification subject to the conditions described in the memo beginning on page 60 of the Board materials, and direct staff to prepare a proposed permanent rule for the Board’s consideration at a future meeting and delay preparation of an emergency rule until such time as the photo identification provisions of 2011 Wisconsin Act 23 are reinstated. Moved by Judge Vocke, seconded by Judge Cane. Motion carried unanimously.

3. Status Report on GAB 1.91, Corporate Campaign Activity

Staff Counsel Falk presented a written report to update the Board.

L. Legislative Status Report

Staff Counsel Haas presented a written report. He updated the Board on one item not in the written report regarding a new statute that gives veterans one state professional license at no charge, which may have an impact on lobbying licenses issued by the Ethics and Accountability Division.

M. Director's Report

Ethics and Accountability Division Report – campaign finance, ethics, and lobbying administration

Written report from Division Administrator Becker was included in the Board packet.

Elections Division Report – election administration

Written report from Division Administrator Robinson was included in the Board packet.

Office of General Counsel Report – general administration

Written report from Kevin J. Kennedy, Sharrie Hauge, and Reid Magney was included in the Board packet.

Judge Brennan asked staff for a reaction to the public comments regarding voting equipment.

Mr. Hein said that Command Central is a third-party vendor supporting equipment manufactured by Sequoia, which was approved in 2006, including the optical scan Insight and the touch-screen Edge. At the time it was approved in 2006, the equipment was certified by the National Association of State Election Directors, and any municipality could purchase it. Recently, Command Central entered into a business agreement with municipalities in Barron County, agreeing to swap one optical scan Insight machine for two touch-screen Edge machines. He said the Edge systems the municipalities received are the same systems approved by the State Elections Board in 2006, and use the same software and the same firmware. He said that statements that the systems are different are false.

Staff Counsel Falk asked whether there are other versions of Edge in use. Mr. Hein said yes, but not in Wisconsin.

Director Kennedy said that the Board staff is receiving allegations about voting equipment from people who do not trust it. Staff is checking out these allegations and has found that only approved voting equipment is being used. He noted there are challenges because the state's voting equipment is getting old, and staff is studying the best way to move forward.

N. Closed Session

Adjourn to closed session to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation.

MOTION: Move to closed session pursuant to §§5.05(6a), 19.85(1)(h), 19.851, 19.85(1)(g), and 19.85(1)(c), to consider written requests for advisory opinions and the investigation of possible violations of Wisconsin’s lobbying law, campaign finance law, and Code of Ethics for Public Officials and Employees; and confer with counsel concerning pending litigation and consider performance evaluation data of a public employee of the Board. Moved by Judge Vocke, seconded by Judge Cane.

Roll call vote: Barland:	Aye	Brennan:	Aye
Cane:	Aye	Deininger:	Aye
Nichol:	Aye	Vocke:	Aye

Motion carried unanimously. The Board recessed at 12:23 p.m. and convened in closed session at 1:13 p.m.

H. Adjourn

The Board adjourned in closed session at 5 p.m.

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The next regular meeting of the Government Accountability Board is scheduled for Friday, June 8, 2012, at the State Capitol in Madison, Wisconsin beginning at 9 a.m.

May 15, 2012 Government Accountability Board meeting minutes prepared by:

Reid Magney, Public Information Officer

May 17, 2012

May 15, 2012 Government Accountability Board meeting minutes certified by:

Judge Gerald Nichol, Board Secretary

June 8, 2012

State of Wisconsin \ Government Accountability Board

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JUDGE DAVID G. DEININGER
Chairperson

KEVIN J. KENNEDY
Director and General Counsel

MEMORANDUM

DATE: For the Meeting of June 8, 2012

TO: Members, Wisconsin Government Accountability Board

FROM: Kevin J. Kennedy
Director and General Counsel
Government Accountability Board

Prepared and Presented by:
Michael Haas, Staff Counsel
Jonathan Paliwal, Assistant Staff Counsel

SUBJECT: Nomination Paper Challenge Procedure

June 1, 2012 was the deadline for filing nomination papers for offices to be elected in the November 6, 2012 Fall Elections. Invariably, once nomination papers are filed, challenges to those nomination papers are filed. The Board's members will be asked to rule on these challenges at the June 8, 2012 meeting. The challenge complaints received by the Monday, June 4, 2012 deadline will be made available to the Board in advance of the Board meeting. To assist the Board's members with the challenge procedure, Staff will conduct the following review.

I. PROCEDURE

1. June 1, 2012 - Nomination papers must be filed not later than 5:00 p.m., (s.8.15, Stats.), for all nominations for the fall elections mandated by statute for November 6, 2012.
2. June 4, 2012 - Challenges to nomination papers must be filed not later than 5:00 p.m. (Rule GAB 2.07). A copy of the complaint will be delivered by the Board's staff to the candidate whose papers are being challenged.
 - a. Challenges must be made by verified complaint and must establish probable cause that the paper or signature challenged does not comply with Wisconsin Statutes or the rules of the Government Accountability Board. (See annotation below.)
 - b. The challenge should be accompanied by affidavits or other relevant documentation. Any challenge which is not established by the materials submitted as of the deadline for challenge shall be denied.

3. June 5, 2012- If received not later than 4:30 p.m., a written response to the challenge, (that will be photocopied or emailed for Board members for the June 8, 2012 meeting), may be filed by the candidate. A written response should also be verified and should also be accompanied by affidavits or other documentation. Just as the burden of establishing a challenge is upon the challenger, the burden of rebutting an established challenge is upon the candidate whose papers are challenged.
4. June 4 – 8, 2012 - The Board's staff will prepare a written report on the challenges and any available responses. To whatever extent necessary and possible, the Board's staff will contact circulators, affiants, and other persons with personal knowledge of the circumstances under which the signatures were obtained. Given the time frame involved, staff verification will likely be limited to close cases.
5. June 8, 2012 - The Board will meet to consider the challenges and responses, and hear any oral presentation. Attached is a copy of the relevant provisions of ch.8 of the Statutes governing nomination papers and nominations. Also attached are the Board's rules, GAB 2.05 and 2.07, governing treatment and sufficiency of nomination papers and challenges thereto.
6. Because two election contests concern incumbents who failed to file a timely declaration of non-candidacy, by statute (s.8.05(1)(j)2, Stats.) the deadlines for any other candidate for the 13th and 81st Assembly Districts are extended no later than 72 hours after the latest times prescribed above. The effect on the process for these two offices is as follows:
 - a. June 4, 2012 - Nomination papers must be filed not later than 5:00 p.m.
 - b. June 7, 2012 - Challenges to nomination papers must be filed not later than 4:30 p.m.
 - c. June 8, 2012 - If received not later than 4:30 p.m., a written response to the challenge may be filed by the candidate.
 - d. If necessary the Board will meet early the following week to consider any cases with delayed due dates. If the Board has sufficient information, or challenges are not filed, certification of these offices may be decided at the June 8, 2012 meeting.

Please note: Because challenge proceedings are an administrative proceeding subject to statutory administrative procedures and potential court review, Board staff recommends that any challenge proceedings be handled on a case-by-case basis. In other words, rather than having the Board entertain public comments on all cases before considering staff recommendations, staff recommends that the Board Chair announce each file, request any public comments regarding that matter, consider the staff recommendation, and then vote on each case prior to calling the next file. This procedure would help the Board to recall the facts of each case and the public comments at the time of the Board's decision, and to create a concise record for any potential court review of a particular decision.

II. ANNOTATION

As a general rule, the policy of the former Elections Board and of the Government Accountability Board with respect to the nomination process has been to promote or facilitate candidate ballot access, not to find a justification for impeding that access, and the challenge procedure was applied in that spirit. As much as possible, the selection and elimination of candidates should be left to the electorate.

For the Board to consider a challenge, the complaint must establish probable cause that a violation of election law has occurred. A complaint must allege facts which, if true, would constitute a failure to comply with Wisconsin's election (not campaign finance) statutes. The complaint must allege a violation of ch.8, Stats., the statutory chapter governing nominations to the general election ballot. The statutory standard for compliance is "substantial compliance" as set forth in §.5.01(1), Stats., as follows:

5.01 Scope. (1) CONSTRUCTION OF CHS. 5 TO 12. Except as otherwise provided, chs.5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to comply with some of their provisions.

The Board's administrative rule, GAB 2.05, sets forth the standards for determining whether nomination papers comply with ch.8, Stats. And its rule, GAB 2.07, sets forth the bases and procedures for challenges to those papers. Note that GAB 2.05(4) provides that "Any information on a nomination paper is entitled to a presumption of validity." Consequently, any challenge to that information must rebut that presumption, (under §.903.01, Stats.), by clear and convincing evidence that "the nonexistence of the presumed fact is more probable than its existence."

Challenges must be based on the personal knowledge of the complainant or of a person whose affidavit or sworn statement accompanies the challenge. As an example: a complaint challenging the eligibility of a signatory to a nomination paper based on his non-residency must be accompanied by reference to Voter Public Access or "Who is My Legislator?" web searches, by a map of the district demonstrating that his address is outside the district, or by a signed statement from the election official, (municipal clerk or deputy clerk), whose responsibility it is to determine the residency of electors of the district. Without such references, the complainant challenger's bare assertion of the signer's non-residency is not sufficient to sustain the challenger's burden of proof.

Challengers will be informed that new grounds for a challenge which are not raised in an initial complaint and which are raised after 4:30 p.m., Monday, June 4, 2012, will not be considered by the Board.

Challenge complaints are filed by delivering an original and a copy to the Government Accountability Board at its offices, pursuant to GAB 2.07, and by the Board's staff delivering a copy to the respondent whose nomination papers are being challenged.

III. CORRECTIONS TO NOMINATION PAPERS

Historically, this Board, as well as its predecessor the former State Elections Board, has recognized that some deficiencies in nomination papers may be corrected by way of an affidavit from the circulator of the nomination paper. This is true whether the deficiencies were identified by staff review of the nomination paper or were identified by a challenge complaint. Consequently, signatures which have been disallowed by the staff in its initial review of a nomination paper may have been “rehabilitated” by a correcting affidavit submitted after the deadline for filing nomination papers. Because such deficiencies may be rehabilitated later, challengers have been advised that signatures stricken during staff review should **not** be considered officially debarred and may still be susceptible to further challenges. Any challenges to signatures disallowed (tentatively) by staff review also must be raised not later than 5:00 p.m., Monday, June 4, 2012, whether or not those papers or signatures have been corrected as of that time.

The basis for this application of the law is the distinction drawn by the courts between statutory requirements that are “mandatory” – the standard for compliance with which is strict, and those that are “directory” – the standard for compliance with which is substantial.

Errors that may be corrected:

a.) Elector errors:

- i. The elector wrote in a date other than the one on which he/she signed or left line undated
- ii. The elector used an address, which does not reflect his actual residence
- iii. The elector wrote in a municipality which does not reflect his actual residence

b.) Certificate of Circulator errors:

The circulator failed to sign or otherwise complete the certificate, or entered inadvertently erroneous data (for instance: the circulator dated the certificate before circulation, not after).

Errors that may not be corrected:

a.) Signatures may not be added or replaced after the filing deadline nor after the certificate of circulator has been executed. (However, the date of certification may be corrected.)

b.) None of the information in the heading of the nomination paper, (i.e., candidate’s name, candidate’s address, political party represented, date of election, office sought, name of jurisdiction or district in which candidate seeks office), may be altered, amended, or added after circulation of the nomination paper. This is the nomination information that each signatory saw and relied upon in deciding to sign the paper.

c.) The date of signing may not be changed to a date other than the one on which the signatory actually signed; nor may any other signatory information be changed from that which was correct at the time the signatory signed.

Attachments: GAB 2.05, 2.07 Wis. Adm. Code
Sections. 8.15, 8.21, 8.30 Wis. Stats.

United States at the forthcoming presidential election. The disclaimer may be filed with the board by certified mail, telegram, or in person.

(2) **BALLOTS.** The form of the official ballots shall be prescribed by the board. The ballot shall provide to an elector the opportunity to vote for an uninstructed delegation to represent this state at the presidential nominating convention of his or her party, or to write in the name of a candidate for the presidential nomination of his or her party.

(3) **REPORTING OF RESULTS.** No later than the 2nd Tuesday following the presidential preference primary, the board shall notify each state party organization chairperson under sub. (1) (b) of the results of the presidential preference primary within the state and within each congressional district.

History: 1973 c. 334 ss. 16, 57; 1975 c. 93, 185, 199, 422; 1977 c. 427; 1979 c. 34, 260, 311, 355; 1983 a. 484; 1985 a. 304 ss. 100 to 106, 156; 1987 a. 391; 1989 a. 192; 1993 a. 184; 1995 a. 16 s. 2; 1999 a. 182; 2003 a. 24.

The national democratic party has a protected right of political association and may not be compelled to seat delegates chosen in an open primary in violation of the party's rules. *Democratic Party of U.S. v. Wisconsin*, 450 U.S. 107 (1981).

8.125 Accessibility of presidential caucuses. Any political party which holds a caucus open to the public for the purpose of selecting delegates to the national presidential nominating convention of the party shall hold the caucus in a place which is accessible to persons in wheelchairs.

History: 1985 a. 304.

8.13 Commission city primary. At the first primary after adoption of the commission form of government the 2 candidates for mayor and the 4 candidates for council members receiving the highest number of votes shall be nominated. At subsequent primaries the 2 candidates receiving the most votes for either office shall be nominated. Only the names of the nominees shall appear on the spring election ballot.

History: 1985 a. 135 s. 83 (2).

8.15 Nominations for September primary. (1) Nomination papers may be circulated no sooner than June 1 preceding the general election and may be filed no later than 5 p.m. on the 2nd Tuesday of July preceding the September primary, except as authorized in this subsection. If an incumbent fails to file nomination papers and a declaration of candidacy by 5 p.m. on the 2nd Tuesday of July preceding the September primary, all candidates for the office held by the incumbent, other than the incumbent, may file nomination papers no later than 72 hours after the latest time prescribed in this subsection. No extension of the time for filing nomination papers applies if the incumbent files written notification with the filing officer or agency with whom nomination papers are filed for the office which the incumbent holds, no later than 5 p.m. on the 2nd Friday preceding the latest time prescribed in this subsection for filing nomination papers, that the incumbent is not a candidate for reelection to his or her office, and the incumbent does not file nomination papers for that office within the time prescribed in this subsection. Only those candidates for whom nomination papers containing the necessary signatures acquired within the allotted time and filed before the deadline may have their names appear on the official September primary ballot.

(2) Only one signature per person for the same office is valid. In addition to his or her signature, each signer of a nomination paper shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing.

(3) All signers on each separate nomination paper for all state offices, county offices, and the offices of U.S. senator and representative in congress shall reside in the jurisdiction or district which the candidate named on the paper will represent, if elected.

(4) (a) The certification of a qualified circulator stating his or her residence with street and number, if any, shall appear at the bottom of each nomination paper, stating he or she personally circulated the nomination paper and personally obtained each of the

signatures; he or she knows they are electors of the ward, aldermanic district, municipality or county, as the nomination papers require; he or she knows they signed the paper with full knowledge of its content; he or she knows their respective residences given; he or she knows each signer signed on the date stated opposite his or her name; and, that he or she, the circulator, is a qualified elector of this state, or if not a qualified elector of this state, is a U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under s. 6.03, Wis. stats.; that he or she intends to support the candidate; and that he or she is aware that falsifying the certification is punishable under s. 12.13 (3) (a), Wis. stats. The circulator shall indicate the date that he or she makes the certification next to his or her signature. The certification may be made by the candidate or any qualified circulator.

(b) Nomination papers shall be accompanied by a declaration of candidacy under s. 8.21. If a candidate for state or local office has not filed a registration statement under s. 11.05 at the time he or she files nomination papers, the candidate shall file the statement with the papers. A candidate for state office shall also file a statement of economic interests with the board under s. 19.43 (4) no later than 4:30 p.m. on the 3rd day following the last day for filing nomination papers under sub. (1), or no later than 4:30 p.m. on the next business day after the last day whenever that candidate is granted an extension of time for filing nomination papers under sub. (1).

(5) (a) Each nomination paper shall have substantially the following words printed at the top:

I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles) residing at (insert candidate's street address) be placed on the ballot at the (general or special) election to be held on (date of election) as a candidate representing the (name of party) so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

(b) Each candidate shall include his or her mailing address on the candidate's nomination papers.

(6) The number of required signatures on nomination papers shall be as follows:

(a) For statewide offices, not less than 2,000 nor more than 4,000 electors.

(b) For representatives in congress, not less than 1,000 nor more than 2,000 electors.

(c) For state senators, not less than 400 nor more than 800 electors.

(d) For representatives to the assembly, not less than 200 nor more than 400 electors.

(dm) For district attorneys, not less than 500 nor more than 1,000 electors in prosecutorial units over 100,000 population and not less than 200 nor more than 400 electors in prosecutorial units of 100,000 population or less.

(e) For county offices, not less than 500 nor more than 1,000 electors in counties over 100,000 population and not less than 200 nor more than 400 electors in counties of 100,000 population or less.

(7) A candidate may not run in more than one party primary at the same time. No filing official may accept nomination papers for the same person in the same election for more than one party. An independent candidate at a partisan primary or other election may not file nomination papers as the candidate of a recognized political party for the same office at the same election. A person who files nomination papers as the candidate of a recognized political party may not file nomination papers as an independent candidate for the same office at the same election.

8.15 NOMINATIONS, PRIMARIES, ELECTIONS**(8) Nomination papers shall be filed:**

(a) For state offices and the offices of U.S. senator and representative in congress, in the office of the board.

(b) For county offices, in the office of the county clerk or board of election commissioners.

History: 1971 c. 304 ss. 13, 29 (1), (2); 1973 c. 334 s. 57; 1977 c. 107, 427; 1979 c. 249, 260, 311; 1983 a. 29, 484; 1985 a. 304; 1989 a. 31; 1993 a. 140, 213, 266; 1999 a. 182; 2001 a. 109; 2005 a. 451; 2007 a. 1.

Cross Reference: See also ss. GAB 2.09, 2.11, and 6.04, Wis. adm. code.

The ban on multiple party nominations under sub. (7) does not burden the associational rights of political parties and is justified by compelling state interests. *Swamp v. Kennedy*, 950 F.2d 383 (1991).

8.16 Partisan nominations. (1) Except as provided in sub. (2), the person who receives the greatest number of votes for an office on a party ballot at any partisan primary, regardless of whether the person's name appears on the ballot, shall be the party's candidate for the office, and the person's name shall so appear on the official ballot at the next election. All independent candidates shall appear on the general election ballot regardless of the number of votes received by such candidates at the September primary.

(2) A person who receives only write-in votes shall not appear on the ballot as the candidate of a recognized political party for an office whenever no candidate's name appears on the ballot for that office unless the person receives at least 5% of the vote cast in the jurisdiction or district for the party's gubernatorial candidate at the last general election or the number of votes equivalent to the minimum number of signatures required on nomination papers for that office under s. 8.15 (6), whichever is greater, and unless:

(a) The person files a declaration of candidacy under s. 8.21 no later than 5 p.m. on the 3rd day after notification of nomination is mailed or personally delivered to the person by the filing officer or agency for the office sought;

(b) If the person is a candidate for state office, the person files a statement of economic interests under s. 19.43 (4), no later than 4:30 p.m. on the 3rd day after notification of nomination is mailed or personally delivered to the person by the board; and

(c) If the person is a candidate for state or local office, the person files a registration statement under s. 11.05.

(2m) Independent candidates may not be nominated by write-in votes but shall file nomination papers under s. 8.20.

(3) Where the boundaries of a district in which the candidate of a political party seeks office have been changed since the most recent gubernatorial election such that it is not possible to calculate the exact percentage of write-in votes, under sub. (2), which are needed by that candidate to become the nominee of the party, the number of votes cast for a political party's nominee for governor at the last general election in each ward or aldermanic district, or each municipality where there are no wards, which is wholly contained within the boundaries of the newly formed district shall be calculated. If a candidate of a political party in a newly formed district does not obtain 5% of the number of votes calculated or the number of votes equivalent to the minimum number of signatures required under s. 8.15 (6), whichever is greater, the candidate shall not appear on the ballot as the candidate of that party for the office sought.

(4) A recognized political party which participated in the most recent gubernatorial election but loses its ballot position and subsequently regains such position under s. 5.62 (2) does not cease to be a political party for purposes of qualification under subs. (2) and (3).

(5) Any candidate for a partisan state office except district attorney may also qualify for payments under s. 11.50 if the candidate meets the requirements specified in s. 11.50; however, a candidate who qualifies under this section for placement on the official ballot at the general election shall appear on such ballot regardless of whether he or she qualifies for payments under s. 11.50.

(6) The persons who receive the greatest number of votes respectively for the offices of governor and lieutenant governor on any party ballot at a primary shall be the party's joint candidates for the offices, and their names shall so appear on the official ballot at the next election.

(7) Nominees chosen at a national convention and under s. 8.18 (2) by each party entitled to a September primary ballot shall be the party's candidates for president, vice president and presidential electors. The state or national chairperson of each such party shall certify the names of the party's nominees for president and vice president to the board no later than 5 p.m. on the first Tuesday in September preceding a presidential election. Each name shall be in one of the formats authorized in s. 7.08 (2) (a).

History: 1975 c. 41, 93, 199; 1977 c. 107, 383, 427, 447; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 31.

Cross Reference: See also s. GAB 6.04, Wis. adm. code.

The vote percentage requirement set forth in sub. (2) applies to special partisan primary elections. 61 Atty. Gen. 172.

The 5 per cent requirement of sub. (2) does not violate equal protection nor burden the right to associate and cast votes effectively. *Blair v. Hebl*, 498 F. Supp. 756 (1980).

8.17 Political party committees. (1) (a) Political parties qualifying for a separate ballot under s. 5.62 (1) (b) or (2) shall elect their party committeemen and committeewomen as provided under sub. (5) (b). The function of committeemen and committeewomen is to represent their neighborhoods in the structure of a political party. Committeemen and committeewomen shall act as liaison representatives between their parties and the residents of the election districts in which they serve. Activities of committeemen and committeewomen shall include, but not be limited to, identifying voters; assistance in voter registration drives; increasing voter participation in political parties; polling and other methods of passing information from residents to political parties and elected public officials; and dissemination of information from public officials to residents. For assistance in those and other activities of interest to a political party, each committeeman and committeewoman may appoint a captain to engage in these activities in each ward, if the election district served by the committeeman or committeewoman includes more than one ward. In an election district which includes more than one ward, the committeeman or committeewoman shall coordinate the activities of the ward captains in promoting the interests of his or her party.

(b) Each political party shall elect one committeeman or committeewoman from each election district. In this section, each village, each town and each city is an "election district"; except that in cities having a population of more than 7,500 which are divided into aldermanic districts, each aldermanic district is an "election district"; and in cities having a population of more than 7,500 which are not divided into aldermanic districts and villages or towns having a population of more than 7,500, each ward or group of combined wards under s. 5.15 (6) (b) constituting a polling place on June 1 of the year in which committeemen or committeewomen are elected is an "election district". To be eligible to serve as its committeeman or committeewoman, an individual shall be, at the time of filing nomination papers or at the time of appointment under this section, a resident of the election district which he or she is chosen to represent and shall be at least 18 years of age.

(4) The term of office of each committeeman or committeewoman shall end on the date of the meeting held under sub. (5) (b) following each September primary.

(5) (a) The county committee of each political party shall consist of the duly elected committeemen and committeewomen and appointed committeemen and committeewomen residing in the county.

(b) A combined meeting of the county committee and members in good standing of the party in the county shall be held no sooner than 15 days after the September primary and no later than April 1 of the following year. At this meeting, the party committeemen or committeewomen and the county committee offices of chairperson, vice chairperson, secretary and treasurer shall be

8.17 NOMINATIONS, PRIMARIES, ELECTIONS

state committee, and those credentials shall be distributed at least 21 days in advance of the meeting by the secretary of the committee calling the caucus or convention.

(11) The names of the committees shall be that of the identifying name followed by Party of ..., the blank to be filled with the name of the county, congressional district, or other geographic areas.

(12) The secretary of the state committee of each recognized political party under s. 5.62 (1) (b) or (2) shall notify the board in writing of the name and address of the elected state committee chairperson within 10 days of his or her election.

History: 1971 c. 304 s. 29 (1), (2); 1971 c. 336; 1973 c. 334; 1979 c. 260, 311, 355; 1981 c. 116; 1983 a. 484, 549; 1985 a. 131, 304; 1987 a. 391; 1991 a. 316; 1993 a. 184; 1999 a. 182; 2003 a. 265.

8.18 Nomination of presidential electors. (1) Candidates for the senate and assembly nominated by each political party at the primary, the state officers and the holdover state senators of each political party shall meet in the state capitol at 10 a.m. on the first Tuesday in October of each year in which there is a presidential election.

(2) The purpose of the convention is to nominate one presidential elector from each congressional district and 2 electors from the state at large. The names of the nominees shall be certified immediately by the chairperson of the state committee of each party to the chairperson of the board.

History: 1973 c. 334; 1975 c. 93; 1977 c. 427; 1993 a. 184; 2007 a. 1.

8.185 Write-in candidates for president and vice president. (1) The names of candidates for president and vice president may be written in, in the place provided, on the general ballot at the general election for choosing the president and vice president of the United States. Write-in votes shall be listed as scattering unless the person whose name is written in has a list of presidential electors on file with the board in accordance with this section or unless the person whose name is written in has received more than 10% of the total vote cast in the ward, or in the municipality if not divided into wards.

(2) Any candidates for the office of president and vice president of the United States as write-in candidates shall file a list of presidential electors and a declaration of candidacy in the manner prescribed in s. 8.21 with the board no later than 4:30 p.m. on the 2nd Tuesday preceding the day of the general election to choose the president and vice president of the United States. The list shall contain one presidential elector from each congressional district and 2 electors from the state at large and the names of the candidates for president and vice president for whom they intend to vote, if elected. Compliance with this subsection may be waived by the board but only if the results of the general election indicate that a write-in candidate for the office of president is eligible to receive the electoral votes of this state except for noncompliance with this subsection. In such event, the write-in candidate shall have until 4:30 p.m. on the Friday following the general election to comply with the filing requirements of this subsection.

(3) If more than one list of presidential electors is filed with the board by any write-in candidates for the offices of president and vice president of the United States, the first list filed shall be considered the valid list, provided that this list meets the additional requirements of this section.

(4) Write-in votes for president and vice president shall be counted as provided in s. 7.50 (2) (i).

History: 1971 c. 304 s. 29 (2); 1973 c. 334 s. 57; 1977 c. 427; 1981 c. 377 ss. 21 to 23; 1983 a. 484.

Cross Reference: See also s. GAB 6.04, Wis. adm. code.

8.19 Party name. (1) The state committee of any party polling less than 75,000 presidential votes in this state in the last election may change the name of the party. The new name may not duplicate that of an existing national party. A certificate of approval by the party's national committee which has been certified by the national committee secretary, the state committee

chairperson and the state committee secretary shall be filed with the board.

(2) The new name shall take effect upon certification.

(3) Every political party entitled, under s. 5.62, to have its candidates on the September primary and general election ballots has exclusive right to the use of the name designating it at any election involving political parties. The board shall not certify nor the county clerk print the name of any person whose nomination papers indicate a party name comprising a combination of existing party names, qualifying words, phrases, prefixes or suffixes in connection with any existing party name.

History: 1973 c. 334 s. 57; 1975 c. 93; 1993 a. 184.

Cross Reference: See also s. GAB 6.04, Wis. adm. code.

8.20 Nomination of independent candidates. (1) Independent nominations may be made for any office to be voted for at any general or partisan special election.

(2) (a) Nomination is by nomination papers. Each nomination paper shall have substantially the following words printed at the top:

I, the undersigned, request that the name of (insert candidate's last name plus first name, nickname or initial, and middle name, former legal surname, nickname or middle initial or initials if desired, but no other abbreviations or titles), residing at (insert candidate's street address) be placed on the ballot at the (general or special) election to be held on (date of election) as a candidate [(representing the (name of party)) or (representing the principle(s) of (statement of principles))] so that voters will have the opportunity to vote for (him or her) for the office of (name of office). I am eligible to vote in the (name of jurisdiction or district in which candidate seeks office). I have not signed the nomination paper of any other candidate for the same office at this election.

(b) Each candidate shall include his or her mailing address on the candidate's nomination papers.

(c) In the case of candidates for the offices of president and vice president, the nomination papers shall contain both candidates' names; the office for which each is nominated; the residence and post-office address of each; and the party or principles they represent, if any, in 5 words or less. In the case of candidates for the offices of governor and lieutenant governor, the nomination papers shall contain both candidates' names or the name of a candidate for either office; the office for which each candidate is nominated; the residence and post-office address of each candidate; and the party or principles each candidate represents, if any, in 5 words or less.

(d) Nomination papers for president and vice president shall list one candidate for presidential elector from each congressional district and 2 candidates for presidential elector from the state at large who will vote for the candidates for president and vice president, if elected.

(3) The certification of a qualified circulator under s. 8.15 (4) (a) shall be appended to each nomination paper.

(4) The number of required signatures on nomination papers for independent candidates shall be the same as the number specified in s. 8.15 (6). For independent presidential electors intending to vote for the same candidates for president and vice president, the number of required signatures shall be not less than 2,000 nor more than 4,000 electors.

(5) Only one signature per person for the same office is valid. In addition to his or her signature, each signer shall list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. Signers of each nomination paper shall reside in the same jurisdiction or district which the candidate named therein will represent, if elected.

(6) Nomination papers shall be accompanied by a declaration of candidacy under s. 8.21. If a candidate for state or local office has not filed a registration statement under s. 11.05 at the time he or she files nomination papers, the candidate shall file the state-

ment with the papers. A candidate for state office shall also file a statement of economic interests with the board under s. 19.43 (4) no later than 4:30 p.m. on the 3rd day following the last day for filing nomination papers under sub. (8) (a), or no later than 4:30 p.m. on the next business day after the last day whenever that candidate is granted an extension of time for filing nomination papers under sub. (8) (a).

(7) Nomination papers shall be filed in the office of the board for all state offices and the offices of U.S. senator and representative in congress, and in the office of county clerk or board of election commissioners for all county offices.

(8) (a) Nomination papers for independent candidates for any office to be voted upon at a general election or September primary and general election, except president, vice president and presidential elector, may be circulated no sooner than June 1 preceding the election and may be filed no later than 5 p.m. on the 2nd Tuesday of July preceding the September primary, except as authorized in this paragraph. If an incumbent fails to file nomination papers and a declaration of candidacy by 5 p.m. on the 2nd Tuesday of July preceding the September primary, all candidates for the office held by the incumbent, other than the incumbent, may file nomination papers no later than 72 hours after the latest time prescribed in this paragraph. No extension of the time for filing nomination papers applies if the incumbent files written notification with the filing officer or agency with whom nomination papers are filed for the office which the incumbent holds, no later than 5 p.m. on the 2nd Friday preceding the latest time prescribed in this paragraph for filing nomination papers, that the incumbent is not a candidate for reelection to his or her office, and the incumbent does not file nomination papers for that office within the time prescribed in this paragraph.

(am) Nomination papers for independent candidates for president and vice president, and the presidential electors designated to represent them, may be circulated no sooner than August 1 and may be filed not later than 5 p.m. on the first Tuesday in September.

(b) Nomination papers for independent candidates for any office to be voted upon at a partisan special election shall be circulated and filed as provided in s. 8.50 (3) (a).

(9) Persons nominated by nomination papers without a recognized political party designation shall be placed on the official ballot at the general election and at any partisan election to the right or below the recognized political party candidates in their own column or row designated "Independent". At the September primary, persons nominated for state office by nomination papers without a recognized political party designation shall be placed on a separate ballot or, if a consolidated paper ballot under s. 5.655 (2), an electronic voting system or voting machines are used, in a column or row designated "Independent". If the candidate's name already appears under a recognized political party it may not be listed on the independent ballot, column or row.

History: 1971 c. 242, 304; 1973 c. 334 s. 57; 1975 c. 369; 1977 c. 107, 287, 427; 1979 c. 249, 260; 1981 c. 377; 1983 a. 29, 484; 1985 a. 304; 1987 a. 391; 1993 a. 140, 266; 1999 a. 6, 32, 182, 186; 2001 a. 109; 2005 a. 451; 2007 a. 1.

Cross Reference: See also ss. GAB 2.09, 2.11, and 6.04, Wis. adm. code.

8.21 Declaration of candidacy. (1) Each candidate, except a candidate for presidential elector under s. 8.20 (2) (d), shall file a declaration of candidacy, no later than the latest time provided for filing nomination papers under s. 8.10 (2) (a), 8.15 (1), 8.20 (8) (a) or 8.50 (3) (a), or the time provided under s. 8.16 (2) or 8.35 (2) (c). A candidate shall file the declaration with the officer or agency with which nomination papers are filed for the office that the candidate seeks, or if nomination papers are not required, with the clerk or board of election commissioners of the jurisdiction in which the candidate seeks office.

(2) The declaration of candidacy shall be sworn to before any officer authorized to administer oaths. The declaration shall contain the name of the candidate in the form specified under s. 8.10 (2) (b) for candidates for nonpartisan office or s. 8.15 (5) (a) or

8.20 (2) (a) for candidates for partisan office and shall state all of the following:

(a) That the signer is a candidate for a named office.

(b) That the signer meets, or will at the time he or she assumes office meet, applicable age, citizenship, residency, or voting qualification requirements, if any, prescribed by the constitutions and laws of the United States and of this state.

(c) That the signer will otherwise qualify for office if nominated and elected.

(3) The declaration of candidacy shall include the candidate's name in the form in which it will appear on the ballot.

(4) Each candidate for state and local office shall include in the declaration of candidacy all of the following:

(a) A statement that the candidate has not been convicted of any misdemeanor designated under state or federal law as a violation of the public trust or any felony for which the candidate has not been pardoned.

(b) A statement that discloses the candidate's municipality of residence for voting purposes, and the street and number, if any, on which the candidate resides.

(5) The declaration of candidacy is valid with or without the seal of the officer who administers the oath.

(6) A candidate for state or local office shall file an amended declaration of candidacy under oath with the same officer or agency if any information contained in the declaration of candidacy changes at any time after the original declaration of candidacy is filed and before the candidate assumes office or is defeated for election or nomination.

History: 1983 a. 484 s. 94; 1985 a. 304; 1987 a. 391; 1993 a. 140; 1999 a. 182; 2001 a. 109; 2005 a. 149.

Cross Reference: See also s. GAB 6.04, Wis. adm. code.

A candidate for election to Congress need not be a resident of the district at the time he or she files nomination papers and executes the declaration of intent to accept the office if elected. A candidate for Congress must be an inhabitant of the state at the time of election. 61 Atty. Gen. 155.

8.25 Election of state and federal officers. (1) PRESIDENTIAL ELECTORS. By general ballot at the general election for choosing the president and vice president of the United States there shall be elected as many electors of president and vice president as this state is entitled to elect senators and representatives in congress. A vote for the president and vice president nominations of any party is a vote for the electors of the nominees.

(2) UNITED STATES SENATOR. One senator to serve in the United States congress shall be chosen at the general election in 1962 and every 6 years thereafter and another in 1964 and every 6 years thereafter.

(3) REPRESENTATIVE IN CONGRESS. One representative to serve in the United States congress shall be chosen from each congressional district at the general election held in each even-numbered year.

(4) CONSTITUTIONAL OFFICERS; TERMS. (a) A governor, lieutenant governor, secretary of state, treasurer and an attorney general shall be elected at the general election in 1970 and quadrennially thereafter. A state superintendent shall be elected on the first Tuesday in April 1917 and quadrennially thereafter.

(b) 1. The regular full term of office of the state superintendent commences on the first Monday of July, next succeeding the superintendent's election.

2. The regular full term of each other officer enumerated in par. (a) commences on the first Monday of January, next succeeding the officer's election.

(5) DISTRICT ATTORNEY; TERM. A district attorney shall be elected for each prosecutorial unit specified in s. 978.01 at the general election in 2008 and quadrennially thereafter. The regular term of the office of district attorney commences on the first Monday in January next succeeding the officer's election.

History: 1981 c. 62, 314; 1987 a. 391; 1989 a. 31; 2007 a. 158.

8.28 NOMINATIONS, PRIMARIES, ELECTIONS

8.28 Challenge to residency qualifications. (1) Any individual who believes that an individual holding or elected to state or local office is not a resident or inhabitant of this state or of the jurisdiction or district in which he or she serves, whenever such qualification is required by the constitution of this state or by any applicable law, may file a verified complaint with the attorney general alleging such facts as may cause him or her to believe that the individual is not qualified to hold office because of failure to meet a residency requirement.

(2) The attorney general may thereupon investigate whether such allegations are true. If the attorney general finds that the allegations of the complaint are true or for any other reason finds that the subject person who is holding or elected to office is not qualified because of failure to meet a residency requirement, the attorney general may commence an action under ch. 784 for a writ of quo warranto to have the subject person's office declared vacant or to restrain any person not entitled to take office from assuming it. In the case of a person who is elected to office in the legislature, the clerk of court shall transmit a copy of the judgment to the presiding officer of the appropriate house, and the house shall determine whether the person is qualified to be seated or whether a vacancy exists.

History: 1979 c. 249; 1983 a. 484.

8.30 Candidates ineligible for ballot placement.

(1) Except as otherwise provided in this section, the official or agency with whom declarations of candidacy are required to be filed may refuse to place the candidate's name on the ballot if any of the following apply:

(a) The nomination papers are not prepared, signed, and executed as required under this chapter.

(b) It conclusively appears, either on the face of the nomination papers offered for filing, or by admission of the candidate or otherwise, that the candidate is ineligible to be nominated or elected.

(c) The candidate, if elected, could not qualify for the office sought within the time allowed by law for qualification because of age, residence, or other impediment.

(2) If no registration statement has been filed by or on behalf of a candidate for state or local office in accordance with s. 11.05 (2g) or (2r) by the applicable deadline for filing nomination papers by such candidate, or the deadline for filing a declaration of candidacy for an office for which nomination papers are not filed, the name of the candidate may not appear on the ballot. This subsection may not be construed to exempt a candidate from applicable penalties if he or she files a registration statement later than the time prescribed in ss. 11.01 (1) and 11.05 (2g).

(2m) The official or agency with whom nomination papers and declarations of candidacy are required to be filed shall not place a candidate's name on the ballot if the candidate's name is ineligible for ballot placement under s. 5.05 (2m) (d) 2. or 15.60 (6).

(3) The official or agency with whom declarations of candidacy are required to be filed may not place a candidate's name on the ballot if the official or agency is prohibited from doing so under s. 19.43 (4) or an ordinance adopted under s. 19.59 (3) (b).

(4) The official or agency with whom a declaration of candidacy is required to be filed may not place a candidate's name on the ballot if the candidate fails to file a declaration of candidacy within the time prescribed under s. 8.21.

History: 1975 c. 93; 1979 c. 120, 328; 1979 c. 355 ss. 28, 29; 1983 a. 484; 1985 a. 304; 1987 a. 391; 2001 a. 109; 2005 a. 149, 177; 2007 a. 1.

Cross Reference: See also ss. GAB 2.09 and 2.11, Wis. adm. code.

A petitioner who timely filed with the county clerk rather than with the elections board under s. 8.10 (6) (a) is barred from the ballot. *State ex rel. Ahlgrim v. State Elections Board*, 82 Wis. 2d 585, 263 N.W.2d 152 (1978).

8.35 Vacancies after nomination. (1) Any person who files nomination papers and qualifies to appear on the ballot may not decline nomination. The name of that person shall appear upon the ballot except in case of death of the person. A person who is appointed to fill a vacancy in nomination or who is nomi-

nated by write-in votes is deemed to decline nomination if he or she fails to file a declaration of candidacy within the time prescribed under sub. (2) (c) or s. 8.16 (2).

(2) (a) If a vacancy occurs after nomination due to the death of a candidate of a recognized political party for a partisan office, the vacancy may be filled by the chairperson of the committee of the proper political party under s. 7.38, or the personal campaign committee, if any, in the case of independent candidates. Similar vacancies in nominations of candidates for nonpartisan local offices may be filled by the candidate's personal campaign committee or, if the candidate had none, by the body which governs the local governmental unit in which the deceased person was a candidate for office. The chairperson, chief officer of the committee, or clerk of the body making an appointment shall file a certificate of appointment with the official or agency with whom declarations of candidacy for the office are filed. For purposes of this paragraph, the official or agency need not recognize members of a personal campaign committee whose names were not filed under s. 11.05 prior to the death of the candidate.

(b) If a vacancy in nomination occurs due to the death of a candidate, the officer or agency with whom nomination papers are filed for the office shall promptly notify the chairperson, committee or body, if any, that the vacancy may be filled within 4 days of the date of the notice, as shown by the postmark if the notice is mailed. The chairperson, committee or body may file a sworn certificate of nomination with the official or agency within the 4-day period.

(c) The official or agency with whom a proper certificate is filed under par. (b) shall promptly notify the candidate who is nominated and transmit to the candidate a declaration of candidacy form and, in the case of a candidate for state or local office, a financial registration statement form under s. 11.05. No later than 5 p.m. on the 3rd day after notification of nomination is mailed or personally delivered to the new nominee by the official or agency, the nominee shall file a declaration of candidacy and, in the case of a candidate for state or local office, a registration statement under s. 11.05. No later than 4:30 p.m. on the 3rd day after notification of nomination is mailed or personally delivered to a new nominee for state office or municipal judge by the official or agency, the nominee shall file a statement of economic interests under s. 19.43 (4). If the nominee fails to file the declaration of candidacy, the official or agency may refuse to place the candidate's name on the ballot. If the nominee fails to file the registration statement or statement of economic interests, the official or agency may not place the candidate's name on the ballot.

(d) If the ballots have been prepared, the committees or body filling the vacancy shall supply stickers as provided under s. 7.38 (3). No vacancy in a nomination occurs prior to the time of the primary election for an office, unless no primary is required for the office for which the nomination is made.

(e) This subsection does not apply in the event of the death of a candidate for nonpartisan office who has no opponent appearing on the election ballot.

(3) Whenever a nominee dies after the election ballots are prepared, and no nomination is made under this section, the votes cast for the deceased shall be counted and returned. If he or she receives a plurality of the votes cast, the vacancy shall be filled as in the case of a vacancy occurring by death after election.

(4) (a) 1. When a candidate is appointed to fill a vacancy under this section, the funds remaining in the former candidate's depository after payment of the former candidate's lawful campaign debts, if any, shall be:

a. Donated to the former candidate's local or state political party if the former candidate was a partisan candidate or donated to the charitable organization of the former candidate's choice or the charitable organization chosen by the former candidate's next of kin if the former candidate is deceased, or if no choice is made returned to the donors on a proportional basis; or

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter GAB 2

ELECTION RELATED PETITIONS

GAB 2.05 Treatment and sufficiency of nomination papers.
GAB 2.07 Challenges to nomination papers.

GAB 2.09 Treatment and sufficiency of election petitions.
GAB 2.11 Challenges to election petitions.

Note: Chapter EIBd 2 was renumbered chapter GAB 2 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 2. and 7., Stats., Register April 2008 No. 628.

GAB 2.05 Treatment and sufficiency of nomination papers. (1) Each candidate for public office has the responsibility to assure that his or her nomination papers are prepared, circulated, signed, and filed in compliance with statutory and other legal requirements.

(2) In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline. Each of the nomination papers shall be numbered, before they are filed, and the numbers shall be assigned sequentially, beginning with the number "1". Notwithstanding any other provision of this chapter, the absence of a page number will not invalidate the signatures on that page.

(3) The filing officer shall review all nomination papers filed with it, up to the maximum number permitted, to determine the facial sufficiency of the papers filed. Where circumstances and the time for review permit, the filing officer may consult maps, directories and other extrinsic evidence to ascertain the correctness and sufficiency of information on a nomination paper.

(4) Any information which appears on a nomination paper is entitled to a presumption of validity. Notwithstanding any other provision of this chapter, errors in information contained in a nomination paper, committed by either a signer or a circulator, may be corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit shall have personal knowledge of the correct information and the correcting affidavit shall be filed with the filing officer not later than three calendar days after the applicable statutory due date for the nomination papers.

(5) Where any required item of information on a nomination paper is incomplete, the filing officer shall accept the information as complete if there has been substantial compliance with the law.

(6) Nomination papers shall contain at least the minimum required number of signatures from the circuit, county, district or jurisdiction which the candidate seeks to represent.

(7) The filing officer shall accept nomination papers which contain biographical data or campaign advertising. The disclaimer specified in s. 11.30 (2), Stats., is not required on any nomination paper.

(8) An elector shall sign his or her own name unless unable to do so because of physical disability. An elector unable to sign because of physical disability shall be present when another person signs on behalf of the disabled elector and shall specifically authorize the signing.

(9) A person may not sign for his or her spouse, or for any other person, even when they have been given a power of attorney by that person, unless sub. (8) applies.

(10) The signature of a married woman shall be counted when she uses her husband's first name instead of her own.

(11) Only one signature per person for the same office is valid. Where an elector is entitled to vote for more than one candidate for the same office, a person may sign the nomination papers of as many candidates for the same office as the person is entitled to vote for at the election.

(12) A complete address, including municipality of residence for voting purposes, and the street and number, if any, of the residence, (or a postal address if it is located in the jurisdiction that the candidate seeks to represent), shall be listed for each signature on a nomination paper.

(13) A signature shall be counted when identical residential information or dates for different electors are indicated by ditto marks.

(14) No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the certificate of circulator and does so after, not before, the paper is circulated. No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.

(15) An individual signature on a nomination paper may not be counted when any of the following occur:

(a) The date of the signature is missing, unless the date can be determined by reference to the dates of other signatures on the paper.

(b) The signature is dated after the date of certification contained in the certificate of circulator.

(c) The address of the signer is missing or incomplete, unless residency can be determined by the information provided on the nomination paper.

(d) The signature is that of an individual who is not 18 years of age at the time the paper is signed. An individual who will not be 18 years of age until the subject election is not eligible to sign a nomination paper for that election.

(e) The signature is that of an individual who has been adjudicated not to be a qualified elector on the grounds of incompetency or limited competency as provided in s. 6.03 (3), Stats., or is that of an individual who was not, for any other reason, a qualified elector at the time of signing the nomination paper.

(16) After a nomination paper has been filed, no signature may be added or removed. After a nomination paper has been signed, but before it has been filed, a signature may be removed by the circulator. The death of a signer after a nomination paper has been signed does not invalidate the signature.

(17) This section is promulgated pursuant to the direction of s. 8.07, Stats., and is to be used by election officials in determining the validity of all nomination papers and the signatures on those papers.

History: Emerg. cr. 8-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74; emerg. r. and recr. eff. 12-16-81; emerg. r. and recr. eff. 6-1-84; cr. Register, November, 1984, No. 347, eff. 12-1-84; r. and recr. Register, January, 1994, No. 457, eff. 2-1-94; CR 00-153: am. (2), (4), and (14), r. (15), renum. (16), (17), and (18) to be (15), (16) and (17), and am. (15) (b) as renum., Register September 2001 No. 549, eff. 10-1-01.

GAB 2.07 Challenges to nomination papers. (1) The board shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for state office that is filed with the board under ss. 5.05 and 5.06, Stats.; and the local filing officer shall review any verified complaint concerning the sufficiency of nomination papers of a candidate for local office that is filed with the local filing officer under s. 8.07, Stats. The filing officer shall apply the standards in s. GAB 2.05 to determine the sufficiency of nomination papers, including consulting extrinsic sources of evidence under s. GAB 2.05 (3).

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(2) (a) Any challenge to the sufficiency of a nomination paper shall be made by verified complaint, filed with the appropriate filing officer. The complainant shall file both an original and a copy of the challenge at the time of filing the complaint. Notwithstanding any other provision of this chapter, the failure of the complainant to provide the filing officer with a copy of the challenge complaint will not invalidate the challenge complaint. The filing officer shall make arrangements to have a copy of the challenge delivered to the challenged candidate within 24 hours of the filing of the challenge complaint. The filing officer may impose a fee for the cost of photocopying the challenge and for the cost of delivery of the challenge to the respondent. The form of the complaint and its filing shall comply with the requirements of ch. GAB 20. Any challenge to the sufficiency of a nomination paper shall be filed within 3 calendar days after the filing deadline for the challenged nomination papers. The challenge shall be established by affidavit, or other supporting evidence, demonstrating a failure to comply with statutory or other legal requirements.

(b) The response to a challenge to nomination papers shall be filed, by the candidate challenged, within 3 calendar days of the filing of the challenge and shall be verified. After the deadline for filing a response to a challenge, but not later than the date for certifying candidates to the ballot, the board or the local filing officer shall decide the challenge with or without a hearing.

(3) (a) The burden is on the challenger to establish any insufficiency. If the challenger establishes that the information on the nomination paper is insufficient, the burden is on the challenged candidate to establish its sufficiency. The invalidity or disqualification of one or more signatures on a nomination paper shall not affect the validity of any other signatures on that paper.

(b) If a challenger establishes that an elector signed the nomination papers of a candidate more than once or signed the nomination papers of more than one candidate for the same office, the 2nd and subsequent signatures may not be counted. The burden of proving that the second and subsequent signatures are that of the same person and are invalid is on the challenger.

(c) If a challenger establishes that the date of a signature, or the address of the signer, is not valid, the signature may not be counted.

(d) Challengers are not limited to the categories set forth in pars. (a) and (b).

(4) The filing officer shall examine any evidence offered by the parties when reviewing a complaint challenging the sufficiency of the nomination papers of a candidate for state or local office. The burden of proof applicable to establishing or rebutting a challenge is clear and convincing evidence.

(5) Where it is alleged that the signer or circulator of a nomination paper does not reside in the district in which the candidate being nominated seeks office, the challenger may attempt to establish the geographical location of an address indicated on a nomination paper, by providing district maps, or by providing a statement from a postmaster or other public official.

History: Emerg. cr. 8-9-74; cr. Register, November, 1974, No. 227, eff. 12-1-74; emerg. r. and recr. eff. 12-16-81; emerg. r. and recr. eff. 6-1-84; cr. Register, Novem-

ber, 1984, No. 347, eff. 12-1-84; emerg. am. (1), (4) to (6), eff. 6-1-86; am. (1), (4) to (6), Register, November, 1986, No. 371, eff. 12-1-86; r. and recr. Register, January, 1994, No. 457, eff. 2-1-94; CR 00-153; am. (2) (a) and (b), Register September 2001 No. 549, eff. 10-1-01; reprinted to restore dropped copy in (2) (b), Register December 2001 No. 552; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628.**

GAB 2.09 Treatment and sufficiency of election petitions. (1) Except as expressly provided herein, the standards established in s. GAB 2.05 for determining the treatment and sufficiency of nomination papers are incorporated by reference into, and are made a part of, this section.

(2) In order to be timely filed, all petitions required to comply with s. 8.40, Stats., and required by statute or other law to be filed by a time certain, shall be in the physical possession of the filing officer not later than the time set by that statute or other law.

(3) All petitions shall contain at least the number of signatures, from the election district in which the petition was circulated, equal to the minimum required by the statute or other law establishing the right to petition.

(4) Only one signature per person for the same petition, is valid.

(5) This section applies to all petitions which are required to comply with s. 8.40, Stats., including recall petitions, and to any other petition whose filing would require a governing body to call a referendum election.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

GAB 2.11 Challenges to election petitions. (1) Except as expressly provided herein, the standards established in s. GAB 2.07 for determining challenges to the sufficiency of nomination papers apply equally to determining challenges to the sufficiency of petitions required to comply with s. 8.40, Stats., including recall petitions, and to any other petition whose filing requires a governing body to call a referendum election.

(2) (a) Any challenge to the sufficiency of a petition required to comply with s. 8.40, Stats., shall be made by verified complaint filed with the appropriate filing officer. The form of the complaint, the filing of the complaint and the legal sufficiency of the complaint shall comply with the requirements of ch. GAB 20; the procedure for resolving the complaint, including filing deadlines, shall be governed by this section and not by ch. GAB 20.

(b) The complaint challenging a petition shall be in the physical possession of the filing officer within the time set by the statute or other law governing the petition being challenged or, if no time limit is specifically provided by statute or other law, within 10 days after the day that the petition is filed.

(3) The response to a challenge to a petition shall be filed within the time set by the statute or other law governing that petition or, if no time limit is specifically provided by statute or other law, within 5 days of the filing of the challenge to that petition. After the deadline for filing a response to a challenge, the filing officer shall decide the challenge with or without a hearing.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.