

STATE OF WISCONSIN
ELECTIONS COMMISSION

COMPLAINT FORM

Please provide the following information about yourself:

Name Scott Harbridge
Address 2209 N Senesac Road, Radisson, WI 54867
Telephone Number 608-797-3338
E-mail harbridgeforassembly@protonmail.com

State of Wisconsin
Before the Elections Commission

The Complaint of Scott Harbridge

_____, Complainant(s) against
Wisconsin Election Commission & Douglas County Clerk Kaci Jo Lundgren
_____, Respondent, whose
address is Clerk 1313 Belknap St., Rm. 101, Superior, WI 54880 & WEC (Address Below)

This complaint is under 5.06 Ballot Preparation (Insert the applicable sections of law in chs.
5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws
relating to campaign financing)

I, Scott Harbridge, allege that:

Per State Statute 5.72 the WEC and County Clerk are responsible for the ballot error in

the 74th Assembly District for the Republican Assembly Candidate's being left off the ballot.

Angela Sharp, Attorney for the WEC, cannot make an unpromulgated rule in regards to this Statute.

The Statute states "the county or municipal clerk preparing the ballots shall submit one copy of each

ballot to the commission for review of possible errors." It does not specify or outline any particular error.

Due to the error of omission of both Republican 74th Assembly Candidates from the ballot in the Town of Summit,

Douglas County, WI. I contest this election in it's entirety. The voters of the Town of Summit were

denied their constitutional right to cast a vote for their choice of candidate in the primary election held on Tuesday August 13th, 2024.

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The legal test used by Wisconsin courts in cases contesting an election based on election irregularities is the "outcome test," meaning that a court will only overturn an election if the election irregularity could be said to have affected the outcome of that election.

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In the Wisconsin Supreme Court's decision in McNally v. Tollander, the Wisconsin Supreme Court declined to apply the "outcome test" because certain public officials had deprived 40% of the electorate the right to vote.

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In that case the Wisconsin Supreme Court said: We agree with these statements as they apply to most cases of election irregularities. But in a case where deprivations of the right to vote are so significant in number or so egregious in character as to seriously undermine the appearance of fairness, we hold such an election must be set aside, even where the outcome of the election might not be changed.

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In this case, for the Town of Summit in Douglas County, Wisconsin, 100% of the voters were not able to vote for a Republican Candidate for the 74th Assembly District, because the Douglas County Clerk incorrectly placed the two Democrat Candidates from the 73rd Assembly District on the 74th Assembly District ballot. The Town of Summit used to be in the 73rd District prior to redistricting that happened in the beginning of 2024.

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In my opinion, I believe that this case also fits the WI Supreme Court Mc Nally v. Tollander decision; the ballot error is egregious in nature, seriously undermines the appearance of fairness in this election, and further places election integrity in question for the entire 74th Assembly race. This is larger than my campaign. If nothing is done and a new election isn't granted, it will set dangerous precedence for future elections.

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(NOTE: One of the exceptions; "deprivations of the right to vote are so significant in number or so egregious in character as to seriously undermine the appearance of fairness." Referenced by the Wisconsin Supreme Court's decision in McNally v. Tollander, 100 Wis. 2d 490, 505, 302 N.W.2d 440, 447-48 (1981).)

See Attached additional documents, statements and State Statute references:

Douglas County Clerk Incorrect Statement

Douglas County Clerk Corrected Statement

Harbridge Campaign Press Release

Senator Cory Tomczyk Statement

(Set forth in detail the facts that establish probable cause to believe that a violation has occurred. Be as specific as possible as it relates to dates, times, and individuals involved. Also provide the names of individuals who may have information related to the complaint. Use as many separate pages as needed and attach copies of any supporting documentation.)

Date: 08/27/24

[Signature]
Complainant's Signature

I, Scott Harbridge, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

[Signature]
Complainant's Signature

STATE OF WISCONSIN

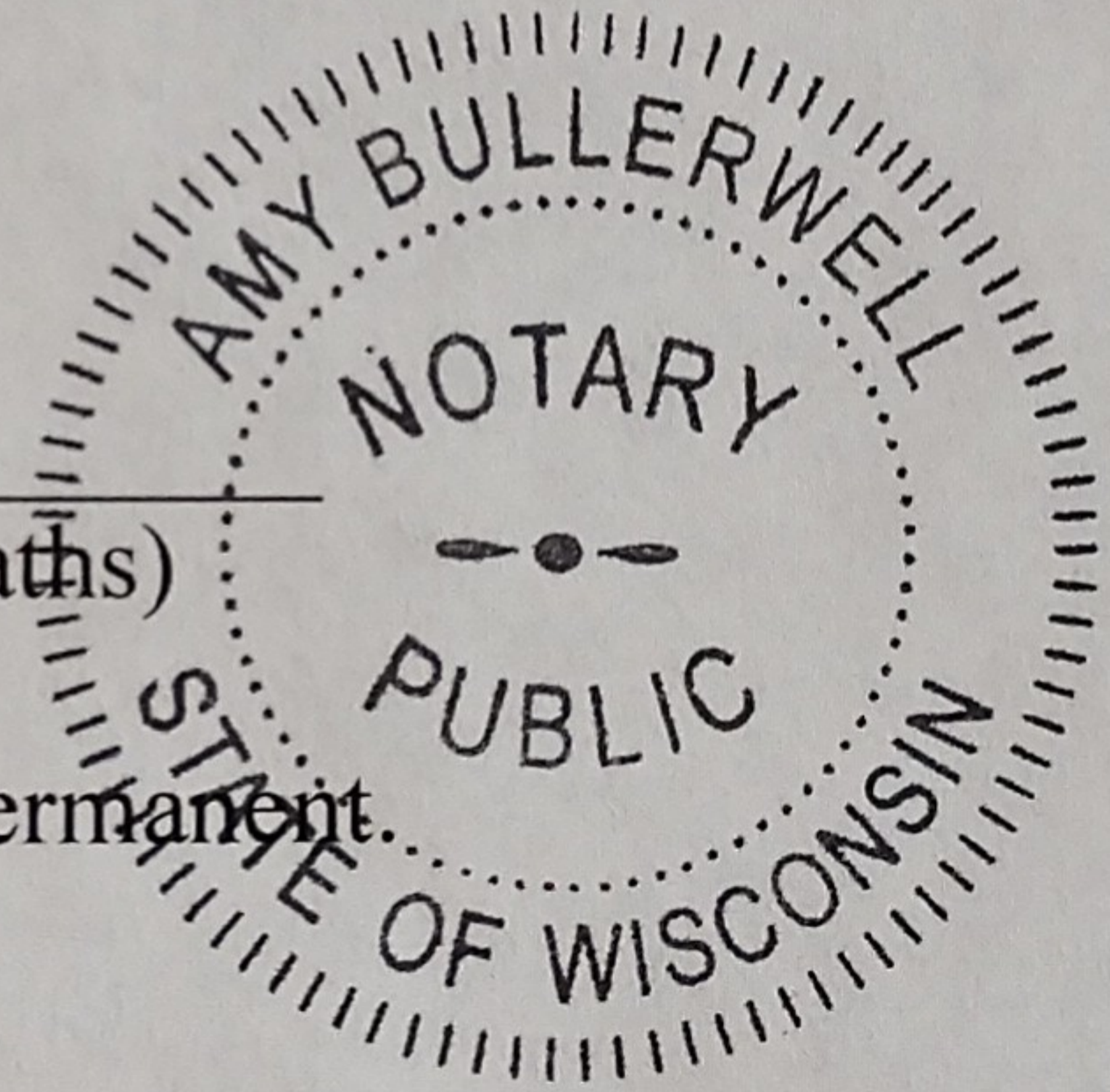
County of Sawyer,
(county of notarization)

Sworn to before me this 27th day of
August, 2024.

[Signature]
(Signature of person authorized to administer oaths)

My commission expires 11-15-2026, or is permanent.

Notary Public or _____
(official title if not notary)



Please send this completed form to:

Mail: Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984

Fax: (608) 267-0500

Email: elections@wi.gov



Douglas County Clerk

Courthouse • 1313 Belknap Street • Room 101 • Superior, Wisconsin • 54880

Kaci Jo Lundgren, County Clerk

Phone: (715) 395-1568

FOR IMMEDIATE RELEASE

Tuesday, August 13, 2024

TOWN OF SUMMIT BALLOTS – INCORRECT ASSEMBLY DISTRICT

SUPERIOR, WI – On Tuesday, the Douglas County Clerk’s Office learned of a mistake involving ballots in the Town of Summit, which has about 700 registered voters.

Tuesday morning, shortly after polls opened, the Douglas County Clerk became aware that all in-person and absentee ballots the county printed for Town of Summit voters contained the wrong Assembly District. The ballots contain Assembly District 73 but should instead contain Assembly District 74. Wisconsin’s newly enacted district maps moved the Town of Summit from AD 73 into AD 74.

There is a contested Democratic Primary in AD 73 and a contested Republican Primary in AD 74. All other contests on the ballot contain the correct districts. All other ballots within Douglas County contain the correct districts. The County Clerk’s Office informed the candidates affected by this mistake earlier this morning.

The County Clerk’s Office does not plan to issue corrected ballots or attempt another potential remedy today for numerous reasons: there is not enough time for new ballots to be printed and delivered in one day; absentee ballots with the incorrect Assembly District have been circulating for weeks; voting equipment containing the incorrect districts has already been programmed and tested. Town of Summit voters do not need to change their voting plan – they should proceed to the polls as normal and no additional action from them is needed at this time.

After Election Day, Wisconsin law will likely prevent boards of canvass from being able to count votes in the Assembly District 73 race in the Town of Summit.

After Election Day, the County Clerk’s Office plans to examine the error to better understand how it occurred and how to prevent it in the future. “My office is committed to transparency and accuracy. Our protocols will be thoroughly reviewed and any procedures that are identified that could eliminate this type of error in the future will be implemented,” Kaci Jo Lundgren, Douglas County Clerk.

The Douglas County Clerk’s Office sincerely regrets this error and the inconvenience it has caused voters. Voters should not hesitate to contact the clerk’s office with any questions.

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CORY TOMCZYK

STATE SENATOR • 29TH SENATE DISTRICT

For Immediate Release
Contact: Sen. Cory Tomczyk

August 15, 2024
(608) 266-2502

Sen. Tomczyk Calls out Meagan Wolfe for Town of Summit Ballot Debacle

Madison... Today, Senator Cory Tomczyk (R-Mosinee) reacts to the embarrassing debacle in the Town of Summit (Douglas County) where ballots in the August 13th primary were printed incorrectly. The Town of Summit has approximately 700 registered voters and is currently located in the 74th Assembly District. Tomczyk commented:

"The utter ineptitude of Meagan Wolfe and the Wisconsin Elections Commission (WEC) was on full display once again! In the Town of Summit in Douglas County, Clerk Kaci Jo Lundgren did not read the new legislative maps correctly and failed to provide an accurate ballot for the voters in one of the towns in her county. The new maps that were signed into law last year moved the Town of Summit out of the 73rd Assembly District and into the 74th. This affected both a Democrat Assembly primary and a Republican Assembly primary.

"This has become yet another failure by Meagan Wolfe and WEC to ensure Wisconsin voters can participate in a well-run and fair election. It's no wonder that so many citizens have doubts about the election process in this state. Why do Wisconsin taxpayers continue to fund her generous salary? Why does the Legislature continue to fund such a flawed organization?"

"The rightfully scrutinized Meagan Wolfe takes no responsibility, shows no interest in managing the election process, nor has the willingness to provide leadership to fix the problem created. One would think that the Wisconsin Elections Commission, especially its leadership, would have conducted several follow ups with county clerks to ensure that they understood the new maps, and what municipalities had changed districts, but they apparently couldn't be bothered to follow through.

"Had this fiasco occurred in Dane County, I have no doubt that Meagan Wolfe would have addressed the issue and made corrections immediately, with the Governor and his staff pushing her along.

"I call on the Assembly to immediately take action and send articles of impeachment to the Senate so that this body can investigate the actions of Meagan Wolfe and the Wisconsin Elections Commission.

"Wisconsin deserves better."

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CHAPTER 7

ELECTION OFFICIALS; BOARDS; SELECTION AND DUTIES; CANVASSING

	SUBCHAPTER I		
	SELECTION AND DUTIES		
7.03	Compensation of election officials and trainees.	7.33	Service as an election official.
7.08	Elections commission.	7.36	Chief inspector's duties.
7.10	County clerks.	7.37	Inspectors' duties.
7.11	Menominee county; town elections.	7.38	Vacancies after nomination.
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7.20	Board of election commissioners.	7.41	Public's right to access.
7.21	Election commissioners, duties and regulations.		SUBCHAPTER II
7.22	Municipal board of election commissioners.		CANVASS OF RETURNS AND CERTIFICATION
7.23	Destruction of election materials.	7.50	Elector intent.
7.24	Title to election materials.	7.51	Local board of canvassers.
7.25	Voting machine officials' duties.	7.52	Canvassing of absentee ballots.
7.30	Appointment of election officials.	7.53	Municipal canvass.
7.31	Training and certification of chief inspectors.	7.54	Contested elections.
7.315	Training of other election officials.	7.60	County canvass.
7.32	Change of election official numbers.	7.70	State canvass.
		7.75	Presidential electors meeting.
		7.80	Notice of election.

NOTE: 2005 Wis. Act 451, which made major revisions to the election laws, including to Chapter 7, contains an extensive prefatory note explaining the changes.

Cross-reference: See definitions in s. 5.02.

SUBCHAPTER I

SELECTION AND DUTIES

7.03 Compensation of election officials and trainees.

(1) (a) Except as authorized under this paragraph, a reasonable daily compensation shall be paid to each inspector, voting machine custodian, automatic tabulating equipment technician, member of a board of canvassers, messenger, and tabulator who is employed and performing duties under chs. 5 to 12. Daily compensation shall also be provided to inspectors and inspector trainees for attendance at training programs conducted by the commission and municipal clerks under ss. 7.31 and 7.315. Alternatively, such election officials and trainees may be paid by the hour at a proportionate rate for each hour actually worked. Any election official or trainee may choose to volunteer his or her services by filing with the municipal clerk of the municipality in which he or she serves a written declination to accept compensation. The volunteer status of the election official or trainee remains effective until the official or trainee files a written revocation with the municipal clerk.

(b) Except as provided in par. (bm), any compensation owed shall be paid by the municipality in which the election is held, except that any compensation payable to a technician, messenger, tabulator, or member of the board of canvassers who is employed to perform services for the county shall be paid by the county and compensation payable to any messenger or tabulator who is employed to perform services for the state shall be paid by the commission.

(bm) Whenever a special election is called by a county or by a school district, a technical college district, a sewerage district, a sanitary district, or a public inland lake protection and rehabilitation district, the county or district shall pay the compensation of election officials performing duties in those municipalities, as determined under sub. (2).

(c) If a central counting location serving more than one municipality is utilized under s. 7.51 (1), the cost of compensation of election officials at the location shall be proportionately divided between the municipalities utilizing the location, except that if all municipalities within a county utilize the location, the compensation shall be paid by the county.

(d) Except as otherwise provided in par. (a), special voting deputies appointed under s. 6.875 (4) and other officials and trainees who attend training sessions under s. 7.15 (1) (e) or 7.25 (5) may also be compensated by the municipality where they serve at the option of the municipality.

(2) The amount of compensation of election officials, when authorized or required, shall be fixed by the appropriate county board of supervisors, municipal governing body, or municipal board of election commissioners in cities over 500,000 population. The commission shall fix the amount to be paid any person employed to perform duties for the state. If the commission employs an individual to perform duties which are the responsibility of a county or municipality, the commission shall charge the expense to the county or municipality.

History: 1973 c. 334 s. 57; 1977 c. 394, 427; 1979 c. 89, 260, 311, 355; 1983 a. 484; 1985 a. 304; 1987 a. 111, 391; 1993 a. 399; 2001 a. 16, 109; 2003 a. 143; 2005 a. 451; 2015 a. 118, 261.

7.08 Elections commission. In addition to its duties for ballot arrangement under ch. 5 and date and notice requirements under ch. 10, the commission shall:

(1) **ELECTION FORMS, VOTING APPARATUS.** (a) Prescribe all official ballot forms necessary under chs. 5 to 10 and 12 and revise the official ballot forms to harmonize with legislation and the current official status of the political parties whenever necessary. The commission shall include on each ballot form, in the space for official endorsement, markings or spaces for identifying a ballot as an overvoted ballot, a duplicate overvoted ballot, a damaged ballot, or a duplicate damaged ballot, and for writing an identifying serial number. The commission shall provide one copy of each ballot form without charge to each county and municipal clerk and board of election commissioners. The commission shall distribute or arrange for distribution of additional copies. The prescribed forms shall be substantially followed in all elections under chs. 5 to 10 and 12.

(b) Prescribe the necessary standard sample forms and ballot containers to make the canvass, returns, statements and tally sheet statements for all elections the results of which are reportable to the commission under s. 7.60 (4) (a), and all other materials as it deems necessary to conduct the elections. The sample forms shall contain the necessary certificates of the inspectors and canvassers with notes explaining their use and statutory basis.

(c) Prescribe forms required by ss. 6.24 (3) and (4), 6.30 (4) and (5), 6.33 (1), 6.47 (1) (am) 2. and (3), 6.55 (2), and 6.86 (2) to (3). All such forms shall contain a statement of the penalty applicable to false or fraudulent registration or voting through use

7.08 ELECTION OFFICIALS; DUTIES; CANVASSING

Updated 21–22 Wis. Stats. 2

of the form. Forms are not required to be furnished by the commission.

(d) Promulgate rules for the administration of the statutory requirements for voting machines and electronic voting systems and any other voting apparatus which may be introduced in this state for use at elections. Pursuant to such responsibility, the commission may obtain assistance from competent persons to check the machines, systems and apparatus and approve for use those types meeting the statutory requirements and shall establish reasonable compensation for persons performing duties under this paragraph.

(2) CERTIFIED LISTS. (a) As soon as possible after the closing date for filing nomination papers or after the canvass of the primary vote, but no later than the deadlines established in s. 10.06, transmit to each county clerk a certified list of all candidates on file in its office for which electors in that county may vote. The list shall designate the order of arrangement and contain each candidate's first name, middle initial or initials and last name, unless the candidate on his or her nomination papers or declaration of candidacy specifies that the middle initial be deleted, that a full middle name or former legal surname be substituted for the middle initial, that an initial be substituted for the candidate's first name or that a nickname be substituted for a first or middle name or for a first initial or middle initial or initials, but no other abbreviations or titles are permitted. The list shall also include each candidate's residence and post-office address; the office for which the person is a candidate; and, the party or principle the candidate represents, if any, in 5 words or less. Names of candidates nominated under s. 7.38 or 8.35 shall be certified by the commission upon filing of the necessary papers with it. At any time prior to an election, the commission may transmit an amended certification if a candidate dies or is determined not to qualify for ballot placement.

(b) The certified list of candidates for president and vice president nominated at a national convention by a party entitled to a partisan primary ballot or for whom electors have been nominated under s. 8.20 shall be sent as soon as possible after the closing date for filing nomination papers, but no later than the deadlines established in s. 10.06.

(d) As soon as possible after the last Tuesday in January of each year in which there is a presidential election, the commission shall transmit to each county clerk a certified list of candidates for president who have qualified to have their names appear on the presidential preference primary ballot.

(3) ELECTION MANUAL. Prepare and publish separate from the election laws an election manual written so as to be easily understood by the general public explaining the duties of the election officials, together with notes and references to the statutes as the commission considers advisable. The election manual shall:

- (a) Be compiled by the commission.
- (b) Emphasize the fact that election officials should help, not hinder, electors in exercising their voting rights.
- (c) Be subject to periodic review and revision when necessary.

(4) ELECTION LAWS. Publish the election laws. The commission shall sell or distribute or arrange for the sale or distribution of copies of the election laws to county and municipal clerks and boards of election commissioners and members of the public.

(5) DISTRICT MAPS. Distribute, upon request and free of charge, to any candidate for representative in Congress, state senator, or representative to the assembly a copy of the map or maps received under s. 16.96 (3) (b) showing district boundaries.

(6) ENFORCEMENT OF FEDERAL VOTING SYSTEM STANDARDS. Following each general election, audit the performance of each voting system used in this state to determine the error rate of the system in counting ballots that are validly cast by electors. If the error rate exceeds the rate permitted under standards of the federal election commission in effect on October 29, 2002, the commission shall take remedial action and order remedial action to be taken by affected counties and municipalities to ensure com-

pliance with the standards. Each county and municipality shall comply with any order received under this subsection.

(8) ELECTORS VOTING WITHOUT PROOF OF RESIDENCE OR IDENTIFICATION OR PURSUANT TO COURT ORDER. Prescribe a written notice to be distributed to electors who vote under s. 6.96 or 6.97 that informs an elector how to obtain information regarding whether his or her vote has been counted, and if the vote will not be counted, the reason that the vote will not be counted.

(10) DOMESTIC ABUSE AND SEXUAL ASSAULT SERVICE PROVIDERS. Provide to each municipal clerk, on a continuous basis, the names and addresses of organizations that are certified under s. 49.165 (4) (a) or 165.93 (4) (a) to provide services to victims of domestic abuse or sexual assault.

(11) COORDINATION WITH AND ASSISTANCE TO LOCAL OFFICIALS. Allocate and assign sufficient members of its staff to coordinate their activities with local election officials and maintain their availability to respond to inquiries from local election officials for each statewide election and each recount in progress.

(12) ASSISTANCE IN OBTAINING PROOF OF IDENTIFICATION. Engage in outreach to identify and contact groups of electors who may need assistance in obtaining or renewing a document that constitutes proof of identification for voting and provide assistance to the electors in obtaining or renewing that document.

History: 1971 c. 242; 1973 c. 334 ss. 6, 57; 1975 c. 85, 93, 94, 199; 1977 c. 29, 107, 394, 427; 1979 c. 89, 177, 260, 311; 1981 c. 377; 1983 a. 51, 484; 1985 a. 120, 304; 1989 a. 192; 1993 a. 140; 1995 a. 16 s. 2; 1997 a. 27; 1999 a. 49, 182; 2001 a. 16, 38, 107, 109; 2003 a. 265; 2005 a. 177, 278, 451; 2007 a. 1, 20, 96; 2009 a. 28; 2011 a. 23, 32, 45, 75, 227; 2013 a. 179, 323; 2015 a. 118 ss. 85 to 87, 266 (10); 2015 a. 261; 2017 a. 366.

In this case, the petitioners waited two weeks after the Wisconsin Elections Commission's failure to certify at least 2,000 valid signatures at its August 20, 2020, meeting before asking the court for relief. The petitioners delayed in seeking relief in a situation with very short deadlines, and under the circumstances, including the fact that the 2020 fall general election had essentially begun, it was too late to grant petitioners any form of relief that would be feasible and that would not cause confusion and undue damage to both the Wisconsin electors who wanted to vote and the other candidates in all of the various races on the general election ballot. *Hawkins v. Wisconsin Elections Commission*, 2020 WI 75, 393 Wis. 2d 629, 948 N.W.2d 877, 20–1488.

7.10 County clerks. (1) ELECTION SUPPLIES AND BALLOTS.

(a) Each county clerk shall provide ballots for every election in the county for all national, state and county offices, including metropolitan sewerage commission elections under s. 200.09 (11) (am), for municipal judges elected under s. 755.01 (4) and for state and county referenda. The official and sample ballots shall be prepared in substantially the same form as those prescribed by the commission under s. 7.08 (1) (a).

(b) The county clerk shall supply sufficient election supplies for national, state and county elections to municipalities within the county. The election supplies shall be enclosed in the sealed package containing the official ballots and delivered to the municipal clerk.

(c) With county board approval any county clerk may purchase or print the official forms of nomination papers for distribution to any person at cost or free.

(d) The county clerk may receive and store any unused ballots after an election upon request of any municipal clerk of a municipality within the county, and may destroy such ballots pursuant to s. 7.23 (1) (am).

(2) PREPARING BALLOTS. The county clerk shall prepare copy for the official ballots immediately upon receipt of the certified list of candidates' names from the commission. Names certified by the commission shall be arranged in the order certified. The county clerk shall place the names of all candidates filed in the clerk's office or certified to the clerk by the commission on the proper ballot or ballots under the appropriate office and party titles. The county clerk shall prepare a special ballot under s. 5.60 (8) showing only the candidates in the presidential preference primary.

(3) TIME SCHEDULE. (a) The county clerk shall distribute the ballots to the municipal clerks no later than 48 days before each partisan primary and general election and no later than 22 days

before each other primary and election, except that the clerk shall distribute the ballots under sub. (2) for the presidential preference primary no later than 48 days before the presidential preference primary. Election forms prepared by the commission shall be distributed at the same time. If the commission transmits an amended certification under s. 7.08 (2) (a) or if the commission or a court orders a ballot error to be corrected under s. 5.06 (6) or 5.72 (3) after ballots have been distributed, the county clerk shall distribute corrected ballots to the municipal clerks as soon as possible.

(b) The county clerk shall distribute an adequate supply of separately wrapped official ballots to each municipal clerk so the municipal clerk may supply ballots to absent elector applicants. The remaining ballots shall be sent in separately sealed packages clearly designating the ward for which each is intended and the approximate number of ballots of each kind enclosed.

(4) RESOLVING NOTICE DOUBTS. When in doubt as to compliance with the statutory requirements for election notices or the correct fees to be paid for them, the county clerk may consult the commission.

(6) MUNICIPAL JUDGE; CERTIFIED LIST. If candidates for the office of a municipal judge who is elected under s. 755.01 (4) file nomination papers in the office of the county clerk and any municipality served by the judge prepares its own ballots for voting machines or an electronic voting system, the county clerk shall certify to the municipal clerk of that municipality the names of the candidates for judge as soon as possible after the last day for filing nomination papers and after certification by the county board of canvassers of the results of any primary election.

(7) VOTER EDUCATION. Each county clerk shall assist the commission in conducting educational programs under s. 5.05 (12) to inform electors about the voting process.

(8) FREE ELECTION INFORMATION EXCHANGE. Each county clerk shall assist the commission and municipal clerks in maintaining toll-free telephone lines and other free access systems under s. 5.05 (13) for exchange of voting information.

(9) TRAINING OF ELECTION OFFICIALS. Each county clerk shall assist the commission in the training of election officials under s. 5.05 (7).

(10) INFORMATION TO COMMISSION. Each county clerk shall provide to the commission any information requested under s. 5.05 (14).

History: 1971 c. 304 s. 29 (2); 1973 c. 280; 1973 c. 334 s. 57; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 221, 260, 311, 355; 1981 c. 377; 1983 a. 484; 1985 a. 89, 304; 1991 a. 316; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 107; 2003 a. 265; 2005 a. 451; 2011 a. 45, 75, 165; 2015 a. 118 s. 266 (10).

In this case, the petitioners waited two weeks after the Wisconsin Elections Commission's failure to certify at least 2,000 valid signatures at its August 20, 2020, meeting before asking the court for relief. The petitioners delayed in seeking relief in a situation with very short deadlines, and under the circumstances, including the fact that the 2020 fall general election had essentially begun, it was too late to grant petitioners any form of relief that would be feasible and that would not cause confusion and undue damage to both the Wisconsin electors who wanted to vote and the other candidates in all of the various races on the general election ballot. *Hawkins v. Wisconsin Elections Commission*, 2020 WI 75, 393 Wis. 2d 629, 948 N.W.2d 877, 20–1488.

County clerks are not to interpret Wisconsin's election laws and make declarations based on those interpretations. It is the Wisconsin Elections Commission that is responsible for guidance in the administration and enforcement of Wisconsin's election laws, not the county clerks. *Jefferson v. Dane County*, 2020 WI 90, 394 Wis. 2d 602, 951 N.W.2d 556, 20–0557.

7.11 Menominee county; town elections. The clerk shall prepare a ballot distinguishing between supervisors elected at large and by ward in any county having only one town with a part of the county board members elected by wards.

History: 1971 c. 304 s. 29 (2); 1973 c. 334.

7.15 Municipal clerks. (1) SUPERVISE REGISTRATION AND ELECTIONS. Each municipal clerk has charge and supervision of elections and registration in the municipality. The clerk shall perform the following duties and any others which may be necessary to properly conduct elections or registration:

(a) Equip polling places.

(b) Provide for the purchase and maintenance of election equipment.

(c) Prepare ballots for municipal elections, and distribute ballots and provide other supplies for conducting all elections. The municipal clerk shall deliver the ballots to the polling places before the polls open.

(cm) Prepare official absentee ballots for delivery to electors requesting them, and except as provided in this paragraph, send an official absentee ballot to each elector who has requested a ballot by mail, and to each military elector, as defined in s. 6.34 (1), and overseas elector who has requested a ballot by mail, electronic mail, or facsimile transmission, no later than the 47th day before each partisan primary and general election and no later than the 21st day before each other primary and election if the request is made before that day; otherwise, the municipal clerk shall send or transmit an official absentee ballot within one business day of the time the elector's request for such a ballot is received. The clerk shall send or transmit an absentee ballot for the presidential preference primary to each military elector and overseas elector who has requested that ballot no later than the 47th day before the presidential preference primary if the request is made before that day, or, if the request is not made before that day, within one business day of the time the request is received. For purposes of this paragraph, "business day" means any day from Monday to Friday, not including a legal holiday under s. 995.20.

(d) Prepare the necessary notices and publications in connection with the conduct of elections or registrations.

(e) Train election officials in their duties, calling them together whenever advisable, advise them of changes in laws, rules and procedures affecting the performance of their duties, and administer examinations as authorized under s. 7.30 (2) (c). The training shall conform with the requirements prescribed in rules promulgated by the commission under ss. 7.31 and 7.315. The clerk shall assure that officials who serve at polling places where an electronic voting system is used are familiar with the system and competent to instruct electors in its proper use. The clerk shall inspect systematically and thoroughly the conduct of elections in the municipality so that elections are honestly, efficiently and uniformly conducted.

(f) Discharge election officials for improper conduct or willful neglect of duties.

(g) In the manner prescribed by the commission, report suspected election frauds, irregularities, or violations of which the clerk has knowledge to the district attorney for the county where the suspected activity occurs and to the commission. The commission shall annually report the information obtained under this paragraph to the legislature under s. 13.172 (2).

(h) Review, examine and certify the sufficiency and validity of petitions and nomination papers.

(i) Direct how and when to destroy the contents of the blank ballot boxes and unused election materials.

(j) Send an absentee ballot automatically to each elector and send or transmit an absentee ballot to each military elector, as defined in s. 6.34 (1), and each overseas elector making an authorized request therefor in accordance with s. 6.22 (4), 6.24 (4), or 6.86 (2) or (2m).

(k) Reassign inspectors appointed to serve at one polling place to another polling place within the municipality whenever necessary to assure adequate staffing at all polling places. No such reassignment may have the effect of eliminating representation at a polling place by one of the political parties entitled to nominate inspectors under s. 7.30 (2) (a).

(1m) ATTEND TRAINING. Each municipal clerk shall, at least once every 2 years during the period beginning on January 1 of each even-numbered year and ending on December 31 of the following year, attend a training program sponsored by the commission under ss. 7.31 and 7.315.

(2) MUNICIPAL ELECTION DUTIES. (a) In municipal elections, the municipal clerks shall perform the duties prescribed for county clerks by s. 7.10.

(b) Cities over 500,000 population may prepare their own official and sample ballots. Official ballots not utilized as absentee ballots shall be printed so they are ready at least 2 days before the election.

(c) With the consent of the county clerk, municipalities may prepare their own ballots whenever voting machines or electronic voting systems are used in elections where candidates for both local offices and national, state or county offices appear on the ballot. This paragraph does not apply to cities under par. (b).

(d) Whenever the governing body of any municipality submits any question to a vote of the electors or whenever a proper recall petition and certificate are filed under s. 9.10, the municipal clerk shall issue a call for the election and prepare and distribute ballots as required in the authorization of submission or as provided in s. 9.10. The date of the referendum shall be fixed by the municipal clerk or board of election commissioners unless otherwise provided by law or unless the governing body fixes a date. The ballot for any referendum shall conform to s. 5.64 (2). If there is already an official municipal referendum ballot for the election, the question may appear on the same ballot.

(2m) OPERATION OF ALTERNATE ABSENTEE BALLOT SITE. In a municipality in which the governing body has elected to establish an alternate absentee ballot site under s. 6.855, the municipal clerk shall operate such site as though it were his or her office for absentee ballot purposes and shall ensure that such site is adequately staffed.

(3) BALLOT SUPPLY; SAMPLE BALLOTS. (a) Where voting machines are used or where electronic voting systems are employed, the municipal clerk shall provide at least 2 duplicate sample ballots for each ward in diagram form showing the board or screen inside each voting machine or the front of each ballot as it will appear in the voting machines or booths on election day.

(b) Sample ballots and voting machine ballots shall be furnished to the officials in the ward or election district at least one day before each election.

(4) RECORDING ELECTORS. Except as authorized in s. 6.33 (5) (a), within 30 days after each election, the municipal clerk shall enter on the registration list under the name of each elector of the municipality who has voted at the election an indication of the date of the election in which the elector voted.

(5) RECORD OF BALLOTS RECEIVED. Each municipal clerk shall keep a record of when and in what condition the packages containing the ballots were received from the county clerk. The municipal clerk shall deliver to the proper officials the unopened packages of ballots the day before the election.

(6) SUBSTITUTE BALLOTS. (a) The municipal clerk shall provide substitute paper ballots in substantially the form of the original ballots whenever the necessary original ballots are not delivered to the municipality, are destroyed, are lost or stolen after delivery, are not ready for distribution or the supply is exhausted during polling hours. The municipal clerk may also provide substitute paper ballots, together with ballot boxes and voting booths, whenever a voting machine or electronic voting system is rendered inoperable by a malfunction which occurs within 24 hours of the time set for opening of the polls. Paper ballots may be cast only in accordance with the procedures prescribed in ss. 6.80 (2) and 7.37 (4).

(b) Upon receiving the substitute paper ballots accompanied by a statement made under oath by the municipal clerk that the ballots have been prepared and furnished by the clerk to replace the original ballots which are not available, or to substitute for a voting machine or electronic voting system which has been rendered inoperable by a malfunction which occurred within 72 hours of the time set for opening of the polls, the election officials shall use the substitute ballots in the same manner as if they had been original ballots.

(7) REQUEST CANVASS ASSISTANCE. The municipal clerk may request all election officials to assist the inspectors in canvassing the votes received at the respective polling places.

(8) RESOLVING NOTICE DOUBTS. When in doubt as to compliance with the statutory requirements for election notices or the correct fees to be paid for them, the municipal clerk may consult the commission.

(9) VOTER EDUCATION. Each municipal clerk shall assist the commission in conducting educational programs under s. 5.05 (12) to inform electors about the voting process.

(10) FREE ELECTION INFORMATION EXCHANGE. Each municipal clerk shall assist the commission in maintaining toll-free telephone lines and any other free access systems under s. 5.05 (13) for exchange of voting information.

(11) TRAINING OF ELECTION OFFICIALS. Each municipal clerk shall train election officials under ss. 7.31 and 7.315.

(12) FREE VOTE COUNTING INFORMATION. Each municipal clerk shall maintain a free access information system under which an elector who votes under s. 6.96 or 6.97 may ascertain current information concerning whether the elector's vote has been counted, and if the vote will not be counted, the reason that it will not be counted.

(13) INFORMATION TO COMMISSION. Each municipal clerk shall provide to the commission any information requested under s. 5.05 (14).

(14) VOTING ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES. Each municipal clerk shall make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible.

(15) PROVIDE NOTICE OF OUTSTANDING PROVISIONAL BALLOTS. As soon as possible after the closing hour for all polling places in the municipality on election night, the municipal clerk shall post at his or her office and on the Internet at a site announced by the clerk before the polls open, and shall make available to any person upon request, a statement of the number of electors who have cast provisional ballots at the election in the municipality that cannot be counted as of that closing hour because the electors have not satisfied relevant voting requirements.

History: 1971 c. 304 s. 29 (2); 1973 c. 334 s. 57; 1975 c. 85 ss. 50, 65; 1975 c. 275, 422; 1977 c. 283; 1977 c. 394 s. 54; 1977 c. 427, 447; 1979 c. 260, 311; 1981 c. 391; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1991 a. 316; 1999 a. 182; 2001 a. 16; 2003 a. 265; 2005 a. 451; 2007 a. 1; 2011 a. 23, 45, 75, 115; 2013 a. 148; 2015 a. 118 ss. 88, 266 (10); 2015 a. 209, 229; 2017 a. 369; 2023 a. 54.

7.20 Board of election commissioners. **(1)** A municipal board of election commissioners shall be established in every city over 500,000 population. A county board of election commissioners shall be established in every county over 750,000 population.

(2) Each board of election commissioners shall consist of 3 members, each member being chosen from lists of at least 3 names each, selected and approved by the county committee of the 2 political parties receiving the most votes for governor in the county in the case of the county board of election commissioners, and receiving the most votes for governor in the city in the case of the city board of election commissioners, in the last general election. The county executive, for the county board of election commissioners, shall select from the list 2 persons from the majority party and one person from the next highest party in the county. The mayor, for the city board of election commissioners, shall select from the list 2 persons from the majority party and one person from the next highest party in the city.

(3) The persons chosen shall be qualified electors and residents of the state and county and, for the city board of election commissioners, of the city.

(4) Before beginning their duties as election commissioners each appointee shall take and file the official oath.

(5) Each board of election commissioners shall choose its own chairperson. An act of a majority of the board is an act of the board.

(6) The election commissioners shall not hold any other public office and are ineligible for any appointive or elective public office, except the office of notary public, during their term.

(7) The term of office shall be 4 years, and until successors have been commissioned and qualified, beginning on July 1 each year following a presidential election. Successors shall be appointed the same way.

History: 1973 c. 334; 1975 c. 124; 1983 a. 484 s. 172 (1); 1993 a. 184; 2013 a. 373.

Municipal clerks are the officials primarily responsible for election administration in Wisconsin. A “board of election commissioners” is established in Wisconsin’s high population cities and counties to carry out the duties otherwise accomplished by municipal and county clerks everywhere else. The phrase “municipal clerk or board of election commissioners” appears in tandem all over the election statutes because that describes the duties of local election officials. *State ex rel. Zignego v. Wisconsin Elections Commission*, 2021 WI 32, 396 Wis. 2d 391, 957 N.W.2d 208, 19–2397.

7.21 Election commissioners, duties and regulations.

(1) All powers and duties assigned to the municipal or county clerk or the municipal or county board of canvassers under chs. 5 to 12 shall be carried out by the municipal or county board of election commissioners or its executive director, unless specifically retained or assigned in this section or s. 7.22.

(2) The county clerk shall serve as executive director of the county board of election commissioners. The clerk shall perform whatever duties the board of election commissioners assigns to him or her. An executive director of the city board of election commissioners shall be appointed under s. 62.51.

(3) The board of election commissioners is authorized to employ additional clerical assistants to carry out its necessary duties. The assistants’ salaries shall be fixed by the governing body of the municipality or county.

(4) The board of election commissioners may procure a seal to authenticate official papers and documents.

(5) The city council and county board shall provide office space in the city hall and county courthouse, respectively, pay all the necessary expenses, cooperate with the board of election commissioners, provide storage space for the election equipment and supplies and assist with the moving and conducting of the elections as necessary.

History: 1973 c. 334; 1979 c. 89; 1983 a. 36; 1983 a. 484 s. 172 (1), (2); 1985 a. 304 ss. 81, 155; 1987 a. 382; 1999 a. 150 s. 672; 1999 a. 182; 2007 a. 1; 2013 a. 373.

7.22 Municipal board of election commissioners.

(1) The common council shall determine the salaries of the election commissioners and shall include sufficient funds in its budget to allow the municipal board of election commissioners to fulfill its duties.

(2) All expenses shall be paid upon order of the municipal board of election commissioners, signed by the chairperson and executive director and countersigned by the city comptroller. The orders, made payable to persons in whose favor issued, shall be the vouchers for the city treasurer for the payment of the orders.

(3) The municipal board of election commissioners shall prepare and furnish copies of all registrations, books, maps, instructions, and forms pertaining to the rules for registration and conducting elections for the use and guidance of the election officials.

(4) The municipal board of election commissioners shall compile and publish a biennial report, containing election statistics and returns of all primaries and elections held within their city and county. Copies of the same shall be distributed to persons in such quantities as the municipal board of election commissioners deems proper.

(5) The chief of police shall station a police officer at polling places designated by the municipal board of election commissioners for each election.

History: 1973 c. 334; 1977 c. 51; 1983 a. 484 s. 172 (1); 1985 a. 304 s. 155; 1993 a. 184; 2001 a. 107.

7.23 Destruction of election materials. (1) All materials and supplies associated with an election, except as provided in sub. (2), may be destroyed according to the following schedule:

(a) Except as provided in par. (am), unused materials after an election and the contents of the blank ballot box after a primary may be destroyed at a time and in a manner designated by the appropriate clerk.

(am) Unused ballots may be discarded or destroyed no earlier than the day after the latest day for the filing of a petition for a recount under s. 9.01 for any office on the ballots.

(c) Registration forms of electors whose registrations are changed to ineligible status under s. 6.50 (7) may be destroyed 4 years after the change, unless an elector becomes eligible again during that period.

(d) Financial reports may be destroyed 6 years after the date of receipt. Financial registration statements may be destroyed 6 years after termination of registration.

(e) Poll lists created for any election may be destroyed 22 months after the election at which they were created.

(f) Except as authorized in par. (g), ballots, applications for absentee ballots, registration forms, or other records and papers requisite to voting at any federal election, other than registration cards, may be destroyed after 22 months.

(g) Detachable recording units and compartments for use with tabulating equipment for an electronic voting system may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates. The requirement to transfer data does not apply to units or compartments for use with tabulating equipment for an electronic voting system that was approved for use prior to January 1, 2009, and that is not used in a federal election.

(h) Except as provided in par. (f), ballots may be destroyed 30 days after any election.

(i) Official canvasses may be destroyed 10 years after the election to which they relate.

(j) Election notices, and proofs of publication and correspondence filed in connection with such notices may be destroyed one year after the date of the election to which they relate.

(k) All other materials and supplies associated with an election may be destroyed 90 days after the election.

(2) If a recount is pending or if the time allowed for filing a recount petition at any election or an appeal or petition for review of any recount determination or decision at an election has not expired, no materials may be destroyed until after the recount is completed and the applicable time period has expired. In addition, if there is litigation pending with respect to a recount at an election, materials may be destroyed and recording units or compartments may be cleared or erased only by order of the court in which litigation is pending. Upon petition of the attorney general or a district attorney or U.S. attorney for the affected jurisdiction, a circuit judge for the affected jurisdiction may order that specified materials not be destroyed or that specified recorders, units or compartments not be cleared or erased as otherwise authorized under this subsection until the court so permits.

History: 1973 c. 334; 1975 c. 85, 200; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 260 ss. 42, 94; 1979 c. 311, 328; 1983 a. 484 ss. 60 to 63, 174; 1985 a. 304 ss. 82, 143; 1987 a. 391; 2003 a. 265; 2005 a. 451; 2009 a. 397; 2011 a. 23; 2015 a. 117.

7.24 Title to election materials. The filing of a nomination paper, ballot application, financial report, affidavit, or other form or statement with the appropriate official or agency responsible for accepting such materials under chs. 5 to 12 irrevocably transfers the legal title to such official or agency, regardless of the sufficiency of the filing. The official or agency shall retain all election materials until destruction or other disposition is authorized under s. 7.23.

History: 1975 c. 93; 1979 c. 89.

7.25 Voting machine officials’ duties. (1) The municipal clerk of each municipality in which voting machines are used is

responsible for the proper ballot being placed on each machine, the sample ballots, setting, adjusting, and putting the machine in order to use in voting when delivered to the ward. For the purpose of labeling, setting, adjusting and putting the voting machines in order, one or more competent voting machine custodians may be employed.

(2) Under the direction of the municipal clerk, the custodian shall label or insert, set, adjust, put in order and deliver the machines with all necessary furniture and appliances to the rooms where the election will be held for each ward at least one hour before the time set for opening the polls on election day.

(3) In preparing a voting machine for an election according to the directions furnished, the custodian shall arrange the machine and ballot so both will meet all the requirements for voting and counting the election in the manner provided for in machine construction.

(4) When a voting machine is properly prepared for an election and delivered to the election ward, it shall be locked and sealed against any movement and the governing body or board of election commissioners shall provide proper protection to prevent tampering with the machines. The custodians preparing the machines shall deliver the keys for the machines to the municipal clerk or executive director of the board of election commissioners together with a written report of each machine's condition.

(5) Before an election each election official serving at a polling place where voting machines are used shall be instructed in their use and their duties in connection with them by the municipal clerk, who shall call as many meetings to give instructions to the election officials as are necessary. Officials and trainees may be compensated for attendance. Any person who does not understand the machines shall not be paid nor be allowed to serve.

(6) (a) Where voting machines are used, the election officials for each ward shall meet at their proper polling place at least 15 minutes before the time set for opening of the polls to arrange the voting machines and furniture to properly conduct the election.

(b) 1. Before opening the polls, the election officials shall do all of the following:

a. Compare the ballots on the machines with the sample ballots furnished by the municipal clerk to ensure that the names, numbers, and letters on the machine ballots and sample ballots agree.

b. Examine the seal on each machine to see that the seal has not been broken.

c. Examine the counter on each machine to see that each counter registers 000.

2. If any counter on any machine does not register 000, the counter number and the number showing on the counter shall be recorded, signed by all the election officials, and a copy shall be conspicuously posted by the inspectors at the polling place during polling hours.

(c) After the inspection under par. (b), on the forms furnished, the election officials shall certify the condition of each voting machine and its counters. Each form shall be signed by each election official. After the election, one copy of each machine's certification shall be delivered with each copy of the election returns.

History: 1971 c. 304 s. 29 (2); 1977 c. 427; 1979 c. 311; 1985 a. 304; 2001 a. 107; 2005 a. 149.

7.30 Appointment of election officials. (1) NUMBER. (a) Except as authorized under par. (b), there shall be 7 inspectors for each polling place at each election. Except as authorized in par. (b), in municipalities where voting machines are used, the municipal governing body may reduce the number of inspectors to 5. A municipal governing body may provide for the appointment of additional inspectors whenever more than one voting machine is used or wards are combined under s. 5.15 (6) (b). A municipal governing body may provide by ordinance for the selection of alternate officials or the selection of 2 or more sets of officials to work at different times on election day, and may permit the munic-

ipal clerk or board of election commissioners to establish different working hours for different officials assigned to the same polling place. Alternate officials shall also be appointed in a number sufficient to maintain adequate staffing of polling places. Except for inspectors who are appointed under par. (b) and officials who are appointed without regard to party affiliation under sub. (4) (c), additional officials shall be appointed in such a manner that the total number of officials is an odd number and the predominant party under sub. (2) is represented by one more official than the other party.

(b) Each municipality may appoint one additional inspector to serve at each polling place without regard to party affiliation who shall serve as a greeter to answer questions and to direct electors to the proper locations for registration and voting and who shall be available to substitute for other election officials who must leave the room during the voting process.

(2) **QUALIFICATIONS AND PROCEDURE.** (a) Only election officials appointed under this section or s. 6.875 may conduct an election. Except as otherwise provided in this paragraph and in ss. 7.15 (1) (k) and 7.52 (1) (b), each election official shall be a qualified elector of a county in which the municipality where the official serves is located, and each chief inspector shall be a qualified elector of the municipality in which the chief inspector serves. If no qualified candidate for chief inspector is available or if the chief inspector is appointed to fill a vacancy under par. (b), the person so appointed need not be a qualified elector of the municipality. If a municipal clerk or deputy clerk is appointed to fill a vacancy under par. (b), the clerk or deputy clerk need not be a resident of the county, but shall be a resident of the state. No more than 2 individuals holding the office of clerk or deputy clerk may serve without regard to county residency in any municipality at any election. All officials appointed under this section shall be able to read and write the English language, be capable, and be of good understanding, and may not be a candidate for any office to be voted for at an election at which they serve. An individual holding a local public office, as defined in s. 19.42 (7w), may be appointed to serve as an election official under this section without having to vacate the local public office. In 1st class cities, they may hold no public office other than notary public. Except as authorized under subs. (1) (b) and (4) (c), all inspectors shall be affiliated with one of the 2 recognized political parties which received the largest number of votes for president, or governor in nonpresidential general election years, in the ward or combination of wards served by the polling place at the last election. Excluding the inspector who may be appointed under sub. (1) (b), the party which received the largest number of votes is entitled to one more inspector than the party receiving the next largest number of votes at each polling place. Whenever 2 or more inspectors are required to perform a function within a polling place and both parties that are entitled to submit nominees have done so, the chief inspector shall assign, insofar as practicable, an equal number of inspectors from the nominees of each party.

(am) Except as otherwise provided in this paragraph, a pupil who is 16 or 17 years of age and who is enrolled in grades 9 to 12 in a public or private school, in a home-based private educational program, as defined in s. 115.001 (3g), or in a tribal school, as defined in s. 115.001 (15m), may serve as an inspector at the polling place serving the pupil's residence, with the approval of the pupil's parent or guardian. Any pupil who has at least a 3.0 grade point average or the equivalent may serve. In addition, a school board, governing body of a private school, as defined in s. 115.001 (3d), tribal school, or administrator of a home-based private educational program may establish criteria for service by a pupil who does not have at least a 3.0 grade point average or the equivalent. A pupil may serve as an inspector at a polling place under this paragraph only if at least one election official at the polling place other than the chief inspector is a qualified elector of this state. No pupil may serve as chief inspector at a polling place under this paragraph. Before appointment by any municipality of a pupil as an inspector under this paragraph, the municipal clerk shall obtain

written authorization from the pupil's parent or guardian for the pupil to serve for the election for which he or she is appointed. In addition, if a pupil does not have at least a 3.0 grade point average or the equivalent, the municipal clerk shall obtain written certification from the principal of the school where the pupil is enrolled, or the administrator of the home-based private educational program in which the pupil is enrolled, that the pupil meets any criteria established by the school board, governing body, or administrator of the home-based private educational program for service as an inspector. Upon appointment of a pupil to serve as an inspector, the municipal clerk shall notify the principal of the school where the pupil is enrolled, or the administrator of the home-based private educational program in which the pupil is enrolled, of the name of the pupil and the date of the election at which the pupil has been appointed to serve.

(b) When a vacancy occurs in an office under this section, the vacancy shall be filled by appointment of the municipal clerk. Unless the vacancy occurs in the position of an inspector appointed under sub. (1) (b), the vacancy shall be filled from the remaining names on the lists submitted under sub. (4) or from additional names submitted by the chairperson of the county party committee of the appropriate party under sub. (4) whenever names are submitted under sub. (4) (d). If the vacancy is due to candidacy, sickness or any other temporary cause, the appointment shall be a temporary appointment and effective only for the election at which the temporary vacancy occurs. The same qualifications that applied to original appointees shall be required of persons who fill vacancies except that if a municipal clerk or deputy clerk fills the vacancy, the clerk or deputy, but not more than a total of 2 individuals in any municipality, may serve without regard to the clerk's or deputy's county of residence, if the clerk or deputy meets the other qualifications.

(c) The governing body of any municipality may require all persons serving as election officials to prove their ability to read and write English and to have a general knowledge of the election laws. Examinations may be given to prove the qualifications can be met. The municipal clerk shall ensure that all training meets the training requirements prescribed in rules promulgated by the commission under ss. 7.31 and 7.315.

(3) TABULATORS. (a) Not less than 30 days before any election the governing body or board of election commissioners of any municipality, by resolution, may authorize the municipal clerk or executive director of the board of election commissioners to select and employ tabulators for any election. Such authorization applies to the elections specified in the resolution, and if not specified, applies until the authorization is modified or revoked.

(b) The tabulators shall assist and be under the direction of the election inspectors after the close of the polls.

(4) APPOINTMENTS. (a) Except in cities where there is a board of election commissioners, the mayor, president or board chairperson of each municipality shall nominate to the governing body no later than their last regular meeting in December of each odd-numbered year the necessary election officials for each polling place and any election officials required under s. 7.52 (1) (b). If no regular meeting is scheduled, the mayor, president or chairperson shall call a special meeting for the purpose of considering nominations no later than December 31.

(b) The 2 dominant parties, under sub. (2), are each responsible for submitting a list of names from which all appointees to inspector positions, other than appointees to inspector positions authorized under sub. (1) (b), shall be chosen. Each person submitting the name of one or more nominees shall certify on his or her list of nominations that the person has contacted each nominee whose name appears on the list and that each nominee has agreed to serve as an election official. The nominations shall be submitted as follows:

1. In cities where there is a board of election commissioners, the county committee under s. 8.17 of each of the 2 recognized political parties described under sub. (2) shall submit a certified list no later than November 30 of each odd-numbered year con-

taining the names of nominees from that party for each of the voting wards in the aldermanic district. For inspectors serving under s. 7.52 (1) (b), the county committees under s. 8.17 of the 2 recognized political parties described under sub. (2) shall submit a certified list containing the names of nominees from that party who are to be appointed under s. 7.52 (1) (b). The chairperson may designate any individual whose name is submitted as a first choice nominee. The chairperson shall sign any list submitted under this subdivision. The board of election commissioners shall appoint, no later than December 31 of odd-numbered years, at least 5 inspectors for each ward. Unless nonappointment is authorized under par. (e), the board of election commissioners shall appoint all first choice nominees for so long as positions are available. The board of election commissioners shall appoint other individuals in its discretion and may designate such alternates as it deems advisable.

2. a. In a municipality other than a city or village located in a county having a population of more than 750,000, the committees organized under s. 8.17 for each of the 2 recognized political parties described under sub. (2) shall submit a list containing the names of nominees from that party. The chairperson of each of the 2 committees shall submit the list to the mayor, president, chairperson, or clerk of the municipality, or to his or her agent, or shall deliver or mail the list to the office of the municipality. If the chairperson submits the list to the municipal clerk or his or her agent, the clerk shall immediately forward the list to the mayor, president, or chairperson of the municipality. If committees are organized in subdivisions of a city, the chairperson of the city committee shall submit the list. If there is no municipal committee, the chairperson of the county or legislative district committee shall submit the list. Except as provided in par. (c), only those persons submitted by the chairperson of each committee under s. 8.17 may act as election officials. The chairperson of each committee under s. 8.17 may designate any individual whose name is submitted as a first choice nominee. The chairperson and secretary of the submitting committee shall sign the list.

b. In a city or village located in a county having a population of more than 750,000, other than a city where there is a board of election commissioners, if there is an aldermanic district or village member of a committee under s. 8.17 for the ward or wards where a polling place is located, the committee member shall submit a list containing the names of nominees from the recognized political party, described under sub. (2), represented by the committee member. For inspectors to be appointed under s. 7.52 (1) (b), the committee members of the committees under s. 8.17 for the 2 recognized political parties described under sub. (2) for the municipality acting jointly shall submit a list containing the names of nominees from the party represented by the committee members of the committees for the municipality acting jointly. Nominations for inspectors to be appointed in a city or village where there is no aldermanic district or village committee member shall proceed in the same manner as in a municipality located in a county having a population of 750,000 or less. The appropriate committee member, committee members, or chairperson shall submit the list to the mayor, president, or clerk of the municipality, or to his or her agent, or shall deliver or mail the list to the office of the municipality. If the list is submitted to the municipal clerk or his or her agent, the clerk shall immediately forward the list to the mayor or president. Except as provided in par. (c), only those persons whose names are submitted as provided in this paragraph may act as election officials. The appropriate committee member, committee members, or chairperson may designate any individual whose name is submitted as a first choice nominee. The aldermanic district or village committee member or the chairperson of the appropriate committee shall sign the list.

c. Unless nonappointment is authorized under par. (e), upon submission of the lists of names as provided under subd. 2. a. or b., the governing body shall appoint each first choice nominee for so long as positions to be filled from that list are available. The governing body shall appoint other nominees in its discretion. If

any nominee is not appointed, the mayor, president, or chairperson of the municipality shall immediately nominate another person from the appropriate lists submitted and continue until the necessary number of election officials from each party is achieved at that meeting.

(c) Except with respect to inspectors who are appointed under sub. (1) (b), for so long as nominees are made available by the political parties under this section, appointments may be made only from the lists of nominees submitted under this subsection. If the lists are not submitted by November 30 of the year in which appointments are to be made, the board of election commissioners shall appoint, or the mayor, president or chairperson of a municipality shall nominate, qualified persons whose names have not been submitted. The board of election commissioners shall give priority to appointing, and the mayor, president, or chairperson of the municipality shall give priority to nominating, qualified electors of the municipality for which no list of nominees was submitted. If an insufficient number of qualified electors of the municipality can be identified, the board of election commissioners may appoint, and the mayor, president, or chairperson of the municipality may nominate, qualified electors of a county within which the municipality is located. If an insufficient number of nominees appears on the lists as of November 30, the board of election commissioners shall similarly appoint, or the mayor, president or chairperson shall similarly nominate, sufficient individuals to fill the remaining vacancies. In addition, the mayor, president, or board chairperson of the municipality shall similarly nominate qualified persons to serve in the inspector positions authorized under sub. (1) (b). Any appointment under this paragraph which is made due to the lack of availability of names submitted under par. (b) may be made without regard to party affiliation.

(d) A party committee or aldermanic district or village committeeman or committeewoman under s. 8.17 may submit additional names for inclusion in its list of nominations under this section at any time for the purpose of filling vacancies that occur during a term of office. However, an appointment need at no time be delayed because of the lack of availability of party nominees.

(e) If an appointing authority believes that, for good cause, it should not appoint an individual whose name is submitted as a first choice nominee under par. (b), it may request the commission to authorize nonappointment. The commission may permit nonappointment of an individual for cause demonstrated by an appointing authority.

(5) OATH OF OFFICE. Within 5 days after appointment of the election officials the municipal clerk shall give each appointee notice. The appointees shall file the official oath with the municipal clerk within 10 days after the mailing of the notice. Appointees to fill vacancies or any other election official who has not filed the oath, before receiving any ballots, shall sign the oath and return it to the municipal clerk. An inspector, after taking the oath, may administer any oath required to conduct an election.

(6) OFFICE TENURE. (a) Except as provided in par. (am), the appointed election officials shall hold office for 2 years and until their successors are appointed and qualified. They shall serve at every election held in their ward during their term of office.

(am) A pupil appointed as an inspector under sub. (2) (am) shall serve as an inspector only for the election for which he or she is appointed. Nothing in this paragraph shall be construed to limit the number of times a pupil may be appointed as an inspector.

(b) Prior to the first election following the appointment of the inspectors, the municipal clerk shall appoint one of the inspectors at each polling place, other than an inspector who is appointed under sub. (1) (b), to serve as chief inspector. No person may serve as chief inspector at any election who is not certified by the commission under s. 7.31 at the time of the election. The chief inspector shall hold the position for the remainder of the term unless the inspector is removed by the clerk or the inspector ceases to be certified under s. 7.31, except that whenever wards are combined or separated under s. 5.15 (6) (b), the municipal clerk shall appoint

another inspector who is certified under s. 7.31 to serve as chief inspector at each polling place designated under s. 5.15 (6) (b). If a vacancy occurs in the position of chief inspector at any polling place, the municipal clerk shall appoint one of the other inspectors who is certified under s. 7.31 to fill the vacancy.

(c) If any election official appointed under this section lacks the qualifications set forth in this section, fails to attend training sessions required under s. 7.15 (1) (e) unless excused therefrom, is guilty of neglecting his or her official duties or commits official misconduct, the municipal clerk or board of election commissioners shall summarily remove the official from office and the vacancy shall be filled under sub. (2) (b).

History: 1971 c. 242; 1971 c. 304 s. 29 (1), (2); 1971 c. 336; 1973 c. 280, 334; 1975 c. 93, 101; 1977 c. 394, 427, 447; 1979 c. 89, 260, 355; 1983 a. 183, 484, 538; 1985 a. 131 s. 3; 1985 a. 304, 332; 1987 a. 391; 1989 a. 192, 359; 1995 a. 16 s. 2; 1997 a. 127; 1999 a. 182; 2001 a. 16, 109; 2005 a. 27, 149, 451; 2007 a. 96; 2009 a. 302; 2011 a. 260 s. 81; 2013 a. 147, 181, 237; 2015 a. 118 s. 266 (10); 2015 a. 195, 261; 2017 a. 207 s. 5; 2017 a. 326; 2021 a. 34.

7.31 Training and certification of chief inspectors.

(1) The commission shall establish requirements for certification of individuals to serve as chief inspectors. The requirements shall include a requirement to attend at least one training session held under sub. (5) before beginning service.

(2) No individual may serve as a chief inspector at a polling place in an election unless the individual is certified by the commission to hold that office on the date of the election at which the individual serves.

(3) The commission shall, upon application, issue certificates to qualified individuals who meet the requirements to be certified as chief inspectors. Each certificate shall carry an expiration date.

(4) The commission shall require each individual to whom a certificate is issued under this section to meet requirements to maintain that certification. The requirements shall include a requirement to attend at least one training session held under sub. (5) every 2 years during the period beginning on January 1 of each even-numbered year and ending on December 31 of the following year. The commission shall renew the certificate of any individual who requests renewal and who meets the requirements prescribed under this subsection.

(5) The commission shall conduct regular training programs to ensure that individuals who are certified by the commission under this section are knowledgeable concerning their authority and responsibilities. The commission shall pay all costs required to conduct the training programs from the appropriation under s. 20.510 (1) (bm).

History: 2001 a. 16, 104; 2003 a. 143; 2005 a. 451; 2007 a. 1; 2015 a. 118 s. 266 (10); 2015 a. 229, 261; 2017 a. 365, 366.

7.315 Training of other election officials. (1) (a) The commission shall, by rule, prescribe the contents of the training that municipal clerks must provide to inspectors, other than chief inspectors, and to special voting deputies appointed under s. 6.875.

(b) 1. Each inspector other than a chief inspector and each special voting deputy appointed under s. 6.875 shall view or attend at least one training program every 2 years during the period beginning on January 1 of each even-numbered year and ending on December 31 of the following year. Except as provided in subd. 2., no individual may serve as an inspector, other than a chief inspector, or as a special voting deputy under s. 6.875 at any election unless the individual has completed training for that election provided by the municipal clerk pursuant to rules promulgated under par. (a) within 2 years of the date of the election.

2. Only when an individual who has received training under subd. 1. is unavailable to perform his or her election duties due to sickness, injury, or other unforeseen occurrence may an individual who has not received training under subd. 1. be appointed to serve as an inspector, other than chief inspector, or a special voting deputy. The appointment of an individual to serve under this subdivision shall be for a specific election and no individual may be appointed under this subdivision more than one time in a 2-year

period beginning on January 1 of each even-numbered year and ending on December 31 of the following year.

(2) The commission shall, by rule, prescribe requirements for, and the content of, training required of municipal clerks under s. 7.15 (1m). The commission may provide such training directly or arrange for such training to be provided by other organizations. The rules shall provide a method for notifying the relevant municipal governing body if a municipal clerk fails to attend required training.

(3) The commission may produce and periodically reissue as necessary a video program for the purpose of training election officials, including special voting deputies and election registration officials. The commission shall make any such program available for viewing electronically through an Internet-based system.

(4) Election registration officials shall receive the training as provided under this section for inspectors, other than chief inspectors.

History: 2005 a. 451; 2015 a. 118 s. 266 (10); 2015 a. 229, 261; 2017 a. 365.

7.32 Change of election official numbers. Notwithstanding s. 7.30 (1) (a), the governing body or board of election commissioners of any municipality may by resolution reduce the number of election officials and modify or rescind any similar previous action. No such action may reduce the number of officials at a polling place to less than 3.

History: 1977 c. 427; 1979 c. 260 s. 46; Stats. 1979 s. 7.32; 1983 a. 484; 1985 a. 304; 2005 a. 451.

Cross-reference: See also ch. EL 12, Wis. adm. code.

7.33 Service as an election official. (1) In this section:

- (a) “Employee” has the meaning given under s. 101.01 (3).
- (b) “Employer” has the meaning given under s. 101.01 (4).
- (c) “State agency” has the meaning given under s. 20.001 (1) and includes an authority created under subch. II of ch. 114 or ch. 231, 232, 233, 234, or 237.

(2) Service as an election official under this chapter shall be mandatory upon all individuals appointed, during the full 2-year term, after which they shall be exempt from further service as an election official, under this chapter, until 3 terms of 2 years each have elapsed. Municipal clerks may grant exemptions from service at any time.

(3) Every employer shall grant to each employee who is appointed to serve as an election official under s. 7.30 a leave of absence for the entire 24-hour period of each election day in which the official serves in his or her official capacity. An employee who serves as an election official shall provide his or her employer with at least 7 days’ notice of application for a leave. The municipal clerk shall verify appointments upon request of any employer.

(4) Except as otherwise provided in this subsection, each local governmental unit, as defined in s. 16.97 (7), may, and each state agency shall, upon proper application under sub. (3), permit each of its employees to serve as an election official under s. 7.30 without loss of fringe benefits or seniority privileges earned for scheduled working hours during the period specified in sub. (3), without loss of pay for scheduled working hours during the period specified in sub. (3) except as provided in sub. (5), and without any other penalty. For employees who are included in a collective bargaining unit for which a representative is recognized or certified under subch. V of ch. 111, this subsection shall apply unless otherwise provided in a collective bargaining agreement.

(5) Any employee of a local governmental unit, as defined in s. 16.97 (7), or state agency who obtains a paid leave of absence under sub. (4) in order to serve as an election official under s. 7.30 shall certify in writing to the head of the local governmental unit or state agency by which he or she is employed the amount of compensation that the employee receives for such service. Upon receipt of the certification, the head of the local governmental unit or state agency shall deduct that amount from the employee’s pay

earned for scheduled working hours during the period specified in sub. (2) when the employee is on a paid leave of absence.

(6) Each employer other than a state agency shall, upon proper application under sub. (3), permit each of its employees to serve as an election official under s. 7.30 without loss of fringe benefits or seniority privileges earned for scheduled working hours during the period specified in sub. (3), and shall not impose any other penalty upon an employee who serves as an election official, except the employer need not pay wages to an employee for time not worked while the employee is serving as an election official.

History: 1977 c. 398; 1979 c. 260 s. 44; Stats. 1979 s. 7.33; 1987 a. 111; 1987 a. 391 ss. 37m, 41g, 41f; 1989 a. 56 s. 259; 1995 a. 27; 2001 a. 16, 104, 109; 2003 a. 33; 2005 a. 335, 451; 2009 a. 28; 2011 a. 10.

7.36 Chief inspector’s duties. Subject to the supervision of the municipal clerk or executive director of the board of election commissioners, the chief inspector shall direct the conduct of activities assigned to the inspectors at the polling place. The chief inspector shall refer any question as to the proper procedure to be employed in carrying out the inspectors’ duties to the municipal clerk or executive director.

History: 1985 a. 304.

7.37 Inspectors’ duties. (1) ADJOURN TO ANOTHER LOCATION. Whenever it becomes impossible or inconvenient to hold an election at the designated location, the inspectors, after assembling at or as near the designated polling place as practicable and before receiving any votes, may adjourn to the nearest convenient place for holding the election. The inspectors shall make a proclamation of the move and a law enforcement officer or other proper person designated by the municipal clerk shall be stationed at or as near as possible to the place where the adjournment was made, to notify all electors of the place to which the election adjourned. At the new location the inspectors shall immediately proceed with the election.

(2) PRESERVE ORDER. The inspectors shall possess full authority to maintain order and to enforce obedience to their lawful commands during the election and the canvass of the votes. They shall permit only one person in a voting booth at a time and shall prevent any person from taking notice of how another person has voted, except when assistance is given under s. 6.82. They shall enforce s. 5.35 (5) and prevent electioneering and distribution of election-related material from taking place in violation of ss. 12.03 and 12.035. If any person refuses to obey the lawful commands of an inspector, or is disorderly in the presence or hearing of the inspectors, interrupts or disturbs the proceedings, they may order any law enforcement officer to remove the person from the voting area or to take the person into custody.

(3) CHECK BALLOT BOXES. Immediately before the proclamation that the polls are open the election inspectors shall open each ballot box in the presence of the people assembled there, turn the boxes upside down so as to empty them of everything that may be inside and then lock them. The ballot boxes shall remain locked and shall not be reopened until the polls close for the purpose of counting the ballots therein.

(4) BALLOTING PROCEDURE. At polling places which utilize paper ballots or electronic voting systems in which ballots are distributed to electors, 2 inspectors shall be assigned to take charge of the official ballots. They shall write their initials on the back of each ballot and deliver to each elector as he or she enters the voting booth one ballot properly endorsed by each of them. Where paper ballots are used, the inspectors shall fold each ballot in the proper manner to be deposited before delivering it to the elector. If asked, inspectors may instruct any elector as to the proper manner of marking the ballot, but they may not give advice, suggestions, express any preferences or make any requests as to the person for whom, the question on which or the ballot on which the elector shall vote.

(5) IMPROPER CONDUCT. Any election official who intentionally fails to properly endorse a ballot or who intentionally gives

an elector a ballot not properly endorsed shall be removed as an election official.

(6) **ATTACH STICKERS.** Whenever a vacancy occurs in a nomination after the ballots have been printed and stickers are provided under s. 7.38 or 8.35 (2), the inspectors shall, at the direction of the municipal clerk, properly apply the stickers to the official ballots before endorsement.

(7) **POLL LISTS.** Two inspectors shall be assigned to have charge of the poll lists at each election.

(8) **ELECTRONIC VOTING SYSTEMS.** Prior to the opening of the polling place, wherever electronic voting systems employing voting devices are used, the inspectors shall place the voting devices in position for voting and examine them to see that they are in proper working order.

(9) **POSTING SAMPLE BALLOTS.** Two sample ballots sent by the municipal clerk shall be posted by the inspectors near the entrance to the polling place for public inspection throughout the day.

(10) **CHALLENGED ELECTORS.** If any person is challenged for cause, the inspectors shall proceed under ss. 6.92 and 6.925 and with the aid of other provisions of ch. 6 as appear applicable, shall resolve the challenge.

(11) **SPOILED BALLOTS.** Any spoiled ballot returned to an inspector under s. 6.80 (2) (c) shall be immediately destroyed by one of the inspectors.

(12) **CANVASSERS.** The election inspectors shall constitute the board of canvassers of their polling place and in that capacity shall perform the duties under s. 7.51, except as otherwise designated by the municipal clerk under ss. 5.85 and 5.86.

(13) **CLOSING OF POLLS.** For each polling place, the municipal clerk shall designate an official of the municipality who shall position himself or herself at the end of the line of individuals waiting to vote, if any, at the time that the polls officially close. The official may be an appointed inspector who serves at that polling place, an employee of the municipal clerk or a police officer. Only individuals in line ahead of the official shall be permitted to vote under s. 6.78 (4).

History: 1971 c. 304 s. 29 (2); 1975 c. 85; 1977 c. 427; 1979 c. 260, 311, 355; 1981 c. 391; 1983 a. 484 ss. 68, 69, 71 to 73, 172 (3); 1985 a. 304; 1989 a. 192; 1999 a. 182; 2001 a. 16; 2003 a. 265; 2005 a. 451; 2009 a. 180; 2015 a. 261.

The requirement under sub. (4) that each ballot be initialed by two inspectors is directory, not mandatory, when the number of votes is equal to the number of electors. *Roth v. LaFarge School District Board of Canvassers*, 2001 WI App 221, 247 Wis. 2d 708, 634 N.W.2d 882, 01–0160.

7.38 Vacancies after nomination. (1) Except as provided in sub. (4), after the death of a candidate nominated for a partisan office, either in a primary or when no primary is required under s. 8.50 (3) (b), the vacancy may be filled by the candidate's political party. In the case of county offices, the vacancy shall be filled by the chairperson of the county committee. If no county committee exists, the vacancy shall be filled by the chairperson of the state committee. For other offices, the vacancy shall be filled by the chairperson of the state committee. The appropriate chairperson shall file with the official or agency with whom nomination papers are filed for the office a certificate signed, certified and sworn to the same as an original nomination paper. The certificate shall state the cause of the vacancy, the name of the new nominee and the office for which the nomination is made. A political party may not nominate a candidate for an office for which no person representing that party has filed nomination papers and a declaration of candidacy.

(2) The certificate shall be filed within 4 days of the date of notification of the vacancy and shall have the same effect as original nomination papers.

(3) If the vacancy occurs after ballots have been printed in any county or municipality, the chairperson of the committee filling the vacancy shall supply the municipal clerk with stickers containing the name of the new nominee only. The stickers may be no larger than the space provided on the ballot for the original candidate's name and office.

(4) There can be no vacancy in nomination prior to a party primary, except when no primary is required under s. 8.50 (3) (b).

(5) In the event of failure to file the name of a current state chairperson, as required under s. 8.17 (12), the commission may not recognize the state committee for the purpose of filling vacancies under sub. (1).

History: 1971 c. 304 s. 29 (2); 1973 c. 334; 1975 c. 93, 200; 1977 c. 340, 427; 1979 c. 311; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1993 a. 184; 1999 a. 182; 2015 a. 118 s. 266 (10).

7.40 Sample ballots. Any committee may, at its own expense and subject to limitations upon contributions and disbursements under ch. 11, print a supply of sample ballots, provided each sample ballot includes on its face the information required by s. 11.1303 (2) and all the names shown on the official ballot. In this section, committee has the meaning given in s. 11.0101 (6).

History: 1987 a. 391 s. 46m; 2015 a. 117.

7.41 Public's right to access. (1) Any member of the public may be present at any polling place, in the office of any municipal clerk whose office is located in a public building on any day that absentee ballots may be cast in that office, or at an alternate site under s. 6.855 on any day that absentee ballots may be cast at that site for the purpose of observation of an election and the absentee ballot voting process, except a candidate whose name appears on the ballot at the polling place or on an absentee ballot to be cast at the clerk's office or alternate site at that election. The chief inspector or municipal clerk may reasonably limit the number of persons representing the same organization who are permitted to observe under this subsection at the same time. Each person permitted to observe under this subsection shall print his or her name in and sign and date a log maintained by the chief inspector or municipal clerk for that polling place, office, or alternate site.

(2) The chief inspector or municipal clerk may restrict the location of any individual exercising the right under sub. (1) to certain areas within a polling place, the clerk's office, or alternate site under s. 6.855. The chief inspector or municipal clerk shall clearly designate observation areas for election observers under sub. (1). The observation areas shall be not less than 3 feet from nor more than 8 feet from the table at which electors announce their name and address to be issued a voter number at the polling place, office, or alternate site and not less than 3 feet from nor more than 8 feet from the table at which a person may register to vote at the polling place, office, or alternate site. The observation areas shall be so positioned to permit any election observer to readily observe all public aspects of the voting process.

(3) The chief inspector or municipal clerk may order the removal of any individual exercising the right under sub. (1) if that individual commits an overt act which does any of the following:

(a) Disrupts the operation of the polling place, clerk's office, or alternate site under s. 6.855.

(b) Violates s. 12.03 (2) or 12.035.

(4) No individual exercising the right under sub. (1) may view the confidential portion of a registration list maintained under s. 6.36 (4) or a poll list maintained under s. 6.79 (6). However, the inspectors or municipal clerk shall disclose to such an individual, upon request, the existence of such a list, the number of electors whose names appear on the list, and the number of those electors who have voted at any point in the proceedings. No such individual may view the certificate of an absent elector who obtains a confidential listing under s. 6.47 (2).

(5) The commission shall promulgate rules that are consistent with the requirements of sub. (2) regarding the proper conduct of individuals exercising the right under sub. (1), including the interaction of those individuals with inspectors and other election officials.

History: 1989 a. 192; 1999 a. 49; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 39, 109; 2005 a. 451; 2013 a. 177; 2015 a. 118.

SUBCHAPTER II

CANVASS OF RETURNS AND CERTIFICATION

7.50 Elector intent. (1) REQUIREMENTS AND RESTRICTIONS.

(a) Except as provided in s. 7.15 (6), only ballots provided by the person authorized to have them printed shall be cast and counted in any election.

(b) When an elector casts more votes for any office or measure than he or she is entitled to cast at an election, all the elector's votes for that office or measure are invalid and the elector is deemed to have voted for none of them, except as provided in par. (c) and sub. (2) (d). If an elector casts less votes for any office or measure than he or she is entitled to cast at an election, all votes cast by the elector shall be counted but no vote shall be counted more than once.

(c) If an elector casts more than one vote for the same candidate for the same office, the first vote is valid and the remaining votes are invalid.

(d) Whenever an electronic voting system is used at a polling place in a partisan primary, and the same ballot is utilized to cast votes for candidates of more than one recognized political party or candidates of a party and independent candidates, if an elector designates a preference for a party or for independent candidates, only votes cast within that preference category may be counted. If an elector does not designate a preference and makes a mark opposite candidates of more than one recognized political party or opposite a candidate in the independent candidates' column and a candidate of a recognized political party, no votes cast by the elector for any candidate for partisan office are valid. Votes for other candidates and votes on ballot questions, if any, shall be counted if otherwise valid.

(2) ASCERTAINMENT OF INTENT. All ballots cast at an election which bear the initials of 2 inspectors shall be counted for the person or referendum question for whom or for which they were intended, so far as the electors' intent can be ascertained from the ballots notwithstanding informality or failure to fully comply with other provisions of chs. 5 to 12. To determine intent:

(b) A ballot cast without any marks may not be counted. A ballot without a mark at the top of a party column may be counted only for persons for whom marks are applicable.

(c) If an elector marks a ballot with a cross (X), or any other marks, as |, A, V, O, /, ✓, +, within the square to the right of a candidate's name, or any place within the space in which the name appears, indicating an intent to vote for that candidate, it is a vote for the candidate whose name it is opposite.

(cm) Any apparent erasure of a mark next to the name of a candidate may not be counted as a vote for that candidate if the elector makes another mark next to the name of one or more different candidates for the same office and counting of the mark would result in an excess number of votes cast for the office.

(d) If an elector writes a person's name in the proper space for write-in candidates for an office, it is a vote for the person written in for the office indicated, regardless of whether the elector strikes the names appearing in the same column for the same office, or places a mark by the same or any other name for the same office, or omits placing a mark to the right of the name written in. If an elector is permitted to vote for more than one candidate for the same office in an election and casts one or more write-in votes which, when added to the votes cast for candidates whose names appear on the ballot, exceed the number of votes authorized to be cast for the office, the write-in votes shall be counted and the votes for candidates whose names appear on the ballot may not be counted, unless there are more write-in votes than votes authorized to be cast, in which case no votes may be counted for the office.

(em) Except as otherwise provided in this paragraph, write-in votes shall only be counted if no candidates have been certified to appear on the ballot. If a candidate has been certified to appear on the ballot, write-in votes may only be counted for a candidate that

files a registration statement under s. 11.0202 (1) (a) no later than noon on the Friday immediately preceding the election. If a candidate certified to appear on the ballot dies or withdraws before the election, all write-in votes shall be counted. When write-in votes are counted, every vote shall be counted for the candidate for whom it was intended, if the elector's intent can be ascertained from the ballot itself.

(g) In partisan primaries, if an elector writes in the name of an individual on a ballot other than the one on which that individual's name is shown as a candidate, the write-in vote may not be counted.

(h) In the general election or a partisan special election, a write-in vote may not be counted for any candidate if the candidate's name appears on the official ballot, except a write-in vote cast for the same office under which the candidate's name appears if no other similar name appears on the ballot for any office.

(hm) In a nonpartisan primary or election using voting machines if an elector is permitted to vote for more than one candidate for the same office, a write-in vote may not be counted if the vote is cast for a candidate whose name appears on the ballot for that office.

(i) The failure by an elector to write in the name of a candidate for the office of vice president of the United States on the general election ballot does not invalidate the elector's vote for any candidate whose name is written in for the office of president of the United States. The failure of an elector to write in the name of a candidate for the office of president of the United States on the general election ballot invalidates the elector's vote for any candidate whose name is written in for the office of vice president of the United States. The failure of an elector to write in the name of a candidate for the office of governor or lieutenant governor on the general election ballot does not invalidate the elector's vote for any candidate whose name is written in for the office of governor or lieutenant governor alone.

(im) If an elector votes for an independent candidate for the office of governor or lieutenant governor but does not vote for any candidate as a running mate of that candidate for the office of lieutenant governor or governor, the vote cast by the elector shall be recorded as a vote cast for both offices and shall not be cumulated with a vote cast by any other elector for the same candidate for the same office jointly with any vote cast for a running mate of that candidate. If an elector votes for independent candidates for the offices of governor and lieutenant governor, the vote cast by the elector shall not be cumulated with a vote cast by any other elector for one but not both of the candidates for whom the elector casts his or her vote.

(j) If an elector writes in an individual for an office, it is a vote for that office, even if the elector writes in the name of a different office.

History: 1977 c. 107, 272, 427; 1979 c. 89, 311, 328; 1981 c. 377 ss. 20, 22; 1981 c. 391; 1983 a. 183; 1983 a. 484 ss. 75, 172 (3); 1985 a. 304; 1987 a. 391; 1989 a. 192, 359; 1991 a. 316; 1999 a. 6; 2001 a. 16; 2011 a. 23; 2013 a. 178; 2015 a. 37, 117.

A board of canvassers may use its discretion and make findings only when the standards of a statute do not apply. Sub. (2) (c) minimizes a board's discretion. When there is a qualifying mark in a qualifying place on the ballot, the vote should be counted. *Roth v. LaFarge School District Board of Canvassers*, 2004 WI 6, 268 Wis. 2d 335, 677 N.W.2d 599, 02-0542.

7.51 Local board of canvassers. (1) CANVASS PROCEDURE. Immediately after the polls close the inspectors except any inspector appointed under s. 7.30 (1) (b) shall proceed to canvass publicly all votes received at the polling place. In any municipality where an electronic voting system is used, the municipal governing body or board of election commissioners may provide or authorize the municipal clerk or executive director of the board of election commissioners to provide for the adjournment of the canvass to one or more central counting locations for specified polling places in the manner prescribed in subch. III of ch. 5. No central counting location may be used to count votes at a polling place where an electronic voting system is not employed. The canvass, whether conducted at the polling place or at a central counting location, shall continue without adjournment until the canvass of

all ballots cast and received on or before election day is completed and the return statement is made or, in municipalities where absentee ballots are canvassed under s. 7.52, until the canvass of all absentee ballots cast and received on or before election day is completed and the return statement for those ballots is made. The inspectors shall not permit access to the name of any elector who has obtained a confidential listing under s. 6.47 (2) during the canvass, except as authorized in s. 6.47 (8).

(2) TALLYING. (a) The inspectors shall first compare the poll lists, correcting any mistakes until the poll lists agree. The chief inspector and the inspectors who are responsible for recording electors under s. 6.79 shall verify the correctness of the poll lists after the polls close by each signing their name thereto. Where ballots are distributed to electors, the inspectors shall then open the ballot box and remove and count the number of ballots therein without examination except as is necessary to ascertain that each is a single ballot. If 2 or more ballots are folded together so as to appear as a single ballot, the inspectors shall lay them aside until the count is completed; and if, after a comparison of the count and the appearance of the ballots it appears to a majority of the inspectors that the ballots folded together were voted by the same person they may not be counted but the inspectors shall mark them as to the reason for removal, set them aside and carefully preserve them. The inspectors shall then proceed under par. (b).

(b) When during the counting of the ballots cast at an election a majority of the inspectors find that a ballot is so defective that they cannot determine with reasonable certainty for whom it was cast, they shall so mark the ballot and preserve it. The inspectors shall not count the vote cast on the ballot for any office for which they determine the ballot to be defective.

(c) Whenever the number of ballots exceeds the number of voting electors as indicated on the poll list, the inspectors shall place all ballots face up to check for blank ballots. In this paragraph, “blank ballot” means a ballot on which no votes are cast for any office or question. The inspectors shall mark, lay aside and preserve any blank ballots. Except in municipalities where absentee ballots are canvassed under s. 7.52, if the number of ballots still exceeds the number of voting electors, the inspectors shall place all ballots face down and proceed to check for the initials. The inspectors shall mark, lay aside and preserve any ballot not bearing the initials of 2 inspectors or any absentee ballot not bearing the initials of the municipal clerk. During the count the inspectors shall count those ballots cast by challenged electors the same as the other ballots.

(d) The inspectors shall keep a written statement, in duplicate, of the number of ballots set aside and the number of defective ballots and challenged ballots. The statement shall contain a record of the reasons for setting aside each ballot and the reasons why each defective or challenged ballot is defective or challenged. The inspectors shall certify that the statement is correct, sign it, and attach it to the tally sheets.

(e) Except in municipalities where absentee ballots are canvassed under s. 7.52, if after any ballots have been laid aside, the number of ballots still exceeds the total number of electors recorded on the poll list, the inspectors shall separate the absentee ballots from the other ballots. If there is an excess number of absentee ballots, the inspectors shall place the absentee ballots in the ballot box and one of the inspectors shall publicly and without examination draw therefrom by chance the number of ballots equal to the excess number of absentee ballots. If there is an excess number of nonabsentee ballots, the inspectors shall place those ballots in the ballot box and one of the inspectors shall publicly and without examination draw therefrom by chance the number of ballots equal to the excess number of those ballots. All ballots so removed may not be counted but shall be specially marked as having been removed by the inspectors on original canvass due to an excess number of ballots, set aside and preserved. When the number of ballots and total shown on the poll list agree, the inspectors shall return all ballots to be counted to the ballot box and shall turn the ballot box in such manner as to thoroughly mix the ballots.

The inspectors shall then open, count and record the number of votes. When the ballots are counted, the inspectors shall separate them into piles for ballots similarly voted. Objections may be made to placement of ballots in the piles at the time the separation is made.

(f) If corrected ballots are distributed under s. 5.72 (3) or 7.10 (3), only the votes cast on the corrected ballots may be counted for any office or referendum in which the original ballots differ from the corrected ballots.

(g) Immediately after the polls close, where voting machines are used, the inspectors shall open the registering or recording compartments or remove the record of the votes cast and shall canvass, record, announce and return on the tally sheets and certificates furnished. In recording the votes registered on any counter which, before the opening of the polls, did not register 000, the inspectors shall upon the return sheets subtract the number registered before the polls opened from the number registered when the polls closed. The difference between the 2 numbers is the correct vote for the candidate whose name was represented by the counter, except if the number registered on the counter when the polls closed is smaller than the number registered thereon when the polls opened, the number 1,000 shall be added to the number registered when the polls closed, before the subtraction is made.

(h) Where a voting machine is used which produces a written record of the total votes cast for each candidate or referendum, the written record shall be presumed correct without reference to the total shown on the recorder in making its original statement, unless an error in the record is clearly apparent or unless a candidate at the election, or in the canvass of a referendum an elector who voted at the referendum, requests that the machine be viewed.

(3) SECURING THE BALLOTS. (a) The inspectors shall place together all ballots counted by them which relate to any national, state or county office or any state, county or technical college district referendum and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots together with any ballots marked “Defective” shall then be secured by the chief inspector, and, if available, one other inspector whose party affiliation is different than the chief inspector’s party affiliation, in the ballot container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The inspectors shall place the ballots cast under s. 6.97 in a separate, securely sealed carrier envelope which is clearly marked “Section 6.97 ballots”. The chief inspector and 2 other inspectors shall sign the carrier envelope. The carrier envelope shall not be placed in the ballot container. The inspectors shall then deliver the ballots to the municipal clerk in the ballot container and carrier envelope.

(b) For ballots which relate only to municipal or school district offices or referenda, the inspectors, in lieu of par. (a), after counting the ballots shall return them to the proper ballot boxes, lock the boxes, paste paper over the slots, sign their names to the paper and deliver them and the keys therefor to the municipal or school district clerk. The clerk shall retain the ballots until destruction is authorized under s. 7.23.

(c) Where voting machines are used, as soon as the count is complete and fully recorded, the inspectors shall seal, close and lock the machine, or remove the record so it cannot be voted on or tampered with. They shall then proceed to separately canvass and return any paper ballots voted under s. 5.40 (3) to (6). The inspectors shall count the challenged ballots the same as other ballots. Upon completion of the canvass, the inspectors shall return the paper ballots in a separate envelope marked “Paper Ballots”. The inspectors shall place the record of write-in votes cast on the machines in an envelope marked “Write-In Votes”. The inspectors shall return the paper ballots and write-in votes along with any printed voting record produced by the voting machines to the clerk under par. (a) or (b) or to the board of election commissioners. The inspectors shall place the envelopes and printed voting record in a properly sealed bag or container, indicating the ward or wards and county.

(d) Except in municipalities where absentee ballots are canvassed under s. 7.52, all absentee certificate envelopes which have been opened shall be returned by the inspectors to the municipal clerk in a securely sealed carrier envelope which is clearly marked “used absentee certificate envelopes”. The envelopes shall be signed by the chief inspector and 2 other inspectors. Except when the ballots are used in a municipal or school district election only, the municipal clerk shall transmit the used envelopes to the county clerk.

(4) ANNOUNCE AND REPORT. (a) The tally sheets shall state the total number of votes cast for each office and for each individual receiving votes for that office, whether or not the individual’s name appears on the ballot, and shall state the vote for and against each proposition voted on. Upon completion of the tally sheets, the inspectors shall immediately complete the inspectors’ statement. The inspectors shall state the excess, if any, by which the number of ballots exceeds the number of electors voting as shown by the poll list and shall state the number of the last elector as shown by the poll lists. At least 3 inspectors, including the chief inspector and, unless election officials are appointed under s. 7.30 (4) (c) without regard to party affiliation, at least one inspector representing each political party, but not including any inspector appointed under s. 7.30 (1) (b), shall then certify to the correctness of the statement and tally sheets and sign their names. All other election officials assisting with the tally shall also certify to the correctness of the tally sheets. When the tally is complete, the inspectors shall publicly announce the results from the statement.

(b) The chief inspector, or one of the inspectors appointed by him or her, immediately after the votes are tabulated or counted at each election, shall report the returns of the election to the municipal clerk or to the school district clerk for school district elections, except in 1st class cities. The clerk shall then make the returns public.

(c) On election night the municipalities shall report the returns, by ward or reporting unit, to the county clerk no later than 2 hours after the votes are tabulated.

(5) RETURNS. (a) 1. The inspectors shall make full and accurate return of the votes cast for each candidate and proposition on tally sheet forms provided by the municipal clerk for that purpose. Each tally sheet shall record the returns for each office or referendum by ward, unless combined returns are authorized in accordance with s. 5.15 (6) (b) in which case the tally sheet shall record the returns for each group of combined wards.

2. After recording the votes, the inspectors shall seal in a carrier envelope outside the ballot bag or container one tally sheet and one poll list for delivery to the county clerk, unless the election relates only to municipal or school district offices or referenda.

3. The inspectors shall also seal the inspectors’ statement, inside a separate carrier envelope, and shall similarly seal in a separate carrier envelope one tally sheet and one poll list for delivery to the municipal clerk. For school district elections, except in 1st class cities, the inspectors shall seal one tally sheet and one poll list for delivery to the school district clerk.

4. The inspectors shall immediately deliver all ballots, statements, tally sheets, lists, and envelopes to the municipal clerk.

5. Upon receipt of the materials under subd. 4., the municipal clerk shall make sufficient copies of the inspectors’ statement under sub. (4) (a) and seal one copy of the statement inside a carrier envelope together with the envelope containing any materials required to be delivered to the county clerk or the school district clerk. The municipal clerk shall retain the original inspectors’ statement.

(b) The municipal clerk shall deliver all ballots, statements, tally sheets, lists, and envelopes relating to a school district election to the school district clerk, excluding any provisional ballots, by 4 p.m. on the day following each such election and shall deliver to the school district clerk any amended statements, tally sheets, and lists for additional provisional ballots canvassed under s. 6.97 (4) no later than 4 p.m. on the Monday after the election. The

municipal clerk shall deliver to the county clerk the ballots, statements, tally sheets, lists, and envelopes for his or her municipality relating to any county, technical college district, state, or national election no later than 4 p.m. on the day following each such election or, in municipalities where absentee ballots are canvassed under s. 7.52, by 4 p.m. on the 2nd day following each such election, and shall deliver to the county clerk any additional provisional ballots canvassed under s. 6.97 (4) together with amended statements, tally sheets, lists, and envelopes no later than 4 p.m. on the Monday after the election. The person delivering the returns shall be paid out of the municipal treasury. Each clerk shall retain ballots, statements, tally sheets, or envelopes received by the clerk until destruction is authorized under s. 7.23 (1).

(6) ELECTRONIC VOTING SYSTEMS. The procedure for canvassing of votes cast at polling places utilizing an electronic voting system in which ballots are distributed to electors shall follow the procedure for canvassing paper ballots insofar as applicable, and the procedure for canvassing of votes cast at polling places utilizing an electronic voting machine shall follow the procedure for canvassing of mechanical voting machines insofar as applicable, except as otherwise provided in ss. 5.85 to 5.89.

History: 1971 c. 304 s. 29 (2); 1977 c. 29; 1977 c. 394 s. 53; 1977 c. 427, 447; 1979 c. 260 ss. 36, 48; 1979 c. 311; 1981 c. 4, 391; 1983 a. 183, 442; 1983 a. 484 ss. 76, 77, 172 (3); 1983 a. 538; 1985 a. 120, 304; 1987 a. 391; 1989 a. 56, 192; 1993 a. 399; 1997 a. 127; 1999 a. 49, 182; 2001 a. 107, 109; 2003 a. 265; 2005 a. 451; 2007 a. 96; 2011 a. 75, 115; 2013 a. 180; 2015 a. 261.

Canvassing boards are governmental bodies subject to the open meetings law—including the public notice, open session, and reasonable public access requirements—when they convene for the purpose of carrying out their statutory canvassing activities, but not when they are gathered only as individual inspectors fulfilling administrative duties. The gathering of election inspectors in a polling place constitutes a meeting of the local canvassing board only after the polls close and the canvassing under this section begins. **OAG 5–14.**

While canvassing boards must provide the public a reasonable opportunity to meaningfully observe their meetings, they may impose reasonable limits on public access to the extent necessary to protect the effective and orderly conduct of the canvass. The same principles of reasonableness govern the public’s opportunity to inspect election documents and materials at canvassing board meetings. **OAG 5–14.**

7.52 Canvassing of absentee ballots. (1) (a) The governing body of any municipality may provide by ordinance that, in lieu of canvassing absentee ballots at polling places under s. 6.88, the municipal board of absentee ballot canvassers designated under s. 7.53 (2m) shall, at each election held in the municipality, canvass all absentee ballots received by the municipal clerk by 8 p.m. on election day. Prior to enacting an ordinance under this subsection, the municipal clerk or board of election commissioners of the municipality shall notify the elections commission in writing of the proposed enactment and shall consult with the elections commission concerning administration of this section. At every election held in the municipality following enactment of an ordinance under this subsection, the board of absentee ballot canvassers shall, any time after the opening of the polls and before 10 p.m. on election day, publicly convene to count the absentee ballots for the municipality. The municipal clerk shall give at least 48 hours’ notice of any meeting under this subsection. Any member of the public has the same right of access to a meeting of the municipal board of absentee ballot canvassers under this subsection that the individual would have under s. 7.41 to observe the proceedings at a polling place. The board of absentee ballot canvassers may order the removal of any individual exercising the right to observe the proceedings if the individual disrupts the meeting.

(b) A municipality that adopts the canvassing procedure under this section may appoint additional inspectors under s. 7.30 (2) (a) to assist the absentee ballot board of canvassers in canvassing absentee ballots under this section. In such case, an odd number of inspectors shall be appointed, and at no time may there be less than 3 inspectors who serve. Except as authorized in s. 7.30 (4) (c), all inspectors shall be affiliated with one of the 2 recognized political parties receiving the largest numbers of votes for president, or for governor in nonpresidential general election years, in the municipality. The party whose candidate received the largest number of votes in the municipality is entitled to one more inspector than the party whose candidate received the next largest num-

ber of votes in the municipality. Each inspector so appointed shall be a qualified elector of the municipality. The inspectors who are appointed under this paragraph shall serve under the direction and supervision of the board of absentee ballot canvassers.

(c) In each municipality where absentee ballots are canvassed under this section, no later than the closing hour of the polls, the municipal clerk shall post at his or her office and on the Internet at a site announced by the clerk before the polls open, and shall make available to any person upon request, a statement of the number of absentee ballots that the clerk has mailed or transmitted to electors and that have been returned by the closing hour on election day. The posting shall not include the names or addresses of any electors.

(2) In counting the absentee ballots, the board of absentee ballot canvassers shall use 2 duplicate copies of a single poll list for the entire municipality prepared in accordance with s. 6.36 (2). Upon accepting each absentee ballot, the board of absentee ballot canvassers shall enter a poll list number on the poll list next to the name of the elector who voted the ballot, beginning with the number one. If the elector's name does not appear on the poll list, the board of absentee ballot canvassers shall enter the number on a separate list maintained under this subsection.

(3) (a) The board of absentee ballot canvassers shall first open the carrier envelope only, and, in such a manner that a member of the public, if he or she desired, could hear, announce the name of the absent elector or the identification serial number of the absent elector if the elector has a confidential listing under s. 6.47 (2). When the board of absentee ballot canvassers finds that the certification has been properly executed and the applicant is a qualified elector of the ward or election district, the board of absentee ballot canvassers shall enter an indication on the poll list next to the applicant's name indicating an absentee ballot is cast by the elector. The board of absentee ballot canvassers shall then open the envelope containing the ballot in a manner so as not to deface or destroy the certification thereon. The board of absentee ballot canvassers shall take out the ballot without unfolding it or permitting it to be unfolded or examined. Unless the ballot is cast under s. 6.95, the board of absentee ballot canvassers shall verify that the ballot has been endorsed by the issuing clerk. If the poll list indicates that proof of residence is required and no proof of residence is enclosed or the name or address on the document that is provided is not the same as the name and address shown on the poll list, the board of absentee ballot canvassers shall proceed as provided under s. 6.97 (2). The board of absentee ballot canvassers shall mark the poll list number of each elector who casts an absentee ballot on the back of the elector's ballot. The board of absentee ballot canvassers shall then deposit the ballot into the proper ballot box and enter the absent elector's name or poll list number after his or her name on the poll list.

(b) When the board of absentee ballot canvassers finds that a certification is insufficient, that the applicant is not a qualified elector in the ward or election district, that the ballot envelope is open or has been opened and resealed, that the ballot envelope contains more than one ballot of any one kind, or that the certificate of a military or overseas elector who received an absentee ballot by facsimile transmission or electronic mail is missing, or if proof is submitted to the board of absentee ballot canvassers that an elector voting an absentee ballot has since died, the board of absentee ballot canvassers shall not count the ballot. Each member of the board of absentee ballot canvassers shall endorse every ballot not counted on the back as "rejected (giving the reason)." The board of absentee ballot canvassers shall reinsert each rejected ballot into the certificate envelope in which it was delivered and enclose the certificate envelopes and ballots, and securely seal the ballots and envelopes in an envelope marked for rejected absentee ballots. The board of absentee ballot canvassers shall endorse the envelope as "rejected ballots," with a statement of the ward or election district and date of the election, and each member of the board of absentee ballot canvassers shall sign the

statement. The board of absentee ballot canvassers shall then return the envelope containing the ballots to the municipal clerk.

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

(b) When during the counting of the ballots cast at an election the board of absentee ballot canvassers finds that a ballot is so defective that it cannot determine with reasonable certainty for whom it was cast, the board of absentee ballot canvassers shall so mark the ballot and preserve it. The board of absentee ballot canvassers shall not count the vote cast on the ballot for any office for which it determines the ballot to be defective.

(c) Whenever the number of ballots exceeds the number of voting electors as indicated on the poll list, the board of absentee ballot canvassers shall place all ballots face up to check for blank ballots. In this paragraph, "blank ballot" means a ballot on which no votes are cast for any office or question. The board of absentee ballot canvassers shall mark, lay aside, and preserve any blank ballots. If the number of ballots still exceeds the number of voting electors, the board of absentee ballot canvassers shall place all ballots face down and proceed to check for the initials. The board of absentee ballot canvassers shall mark, lay aside, and preserve any ballot not bearing the initials of the municipal clerk. During the count, the board of absentee ballot canvassers shall count those ballots cast by challenged electors the same as the other ballots.

(d) The board of absentee ballot canvassers shall keep a written statement, in duplicate, of the number of ballots set aside and the number of defective ballots and challenged ballots. The statement shall contain a record of the reasons for setting aside each ballot and the reasons why each defective or challenged ballot is defective or challenged. The board of absentee ballot canvassers shall certify that the statement is correct, sign it, and attach it to the tally sheets.

(e) If, after any ballots have been set aside, the number of ballots still exceeds the total number of electors recorded on the poll list, the board of absentee ballot canvassers shall place the absentee ballots in the ballot box and one of the members shall publicly and without examination draw therefrom by chance the number of ballots equal to the excess number of ballots. All ballots so removed shall not be counted but shall be specially marked as having been removed by the board of absentee ballot canvassers on original canvass due to an excess number of ballots, set aside, and preserved. When the number of ballots and total shown on the poll list agree, the board of absentee ballot canvassers shall return all ballots to be counted to the ballot box and shall turn the ballot box in such manner as to thoroughly mix the ballots. The board of absentee ballot canvassers shall then open, count, and record the number of votes. When the ballots are counted, the board of absentee ballot canvassers shall separate them into piles for ballots similarly voted. Objections may be made to placement of ballots in the piles at the time the separation is made.

(f) If corrected ballots under s. 5.06 (6) or 5.72 (3) are distributed under s. 7.10 (3), only the votes cast on the corrected ballots may be counted for any office or referendum in which the original ballots differ from the corrected ballots.

(g) The board of absentee ballot canvassers shall place together all ballots counted by it that relate to any national, state, or county office or any state, county, or technical college district

referendum and secure them together so they cannot be untied or tampered with without breaking the seal. The secured ballots, together with any ballots marked “Defective,” shall then be secured by the board of absentee ballot canvassers in the ballot container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The board of absentee ballot canvassers shall place the ballots cast under s. 6.97 in a separate, securely sealed carrier envelope which is clearly marked “Section 6.97 ballots.” Each member of the board of absentee ballot canvassers shall sign the carrier envelope. The carrier envelope shall not be placed in the ballot container. The board of absentee ballot canvassers shall then deliver the ballots to the municipal clerk in the ballot container and carrier envelope.

(h) For ballots that relate only to municipal or school district offices or referenda, the board of absentee ballot canvassers, in lieu of par. (a), after counting the ballots shall return them to the proper ballot boxes, lock the boxes, paste paper over the slots, sign their names to the paper, and deliver them and the keys therefor to the municipal or school district clerk. The clerk shall retain the ballots until destruction is authorized under s. 7.23.

(i) All absentee certificate envelopes that have been opened shall be returned by the board of absentee ballot canvassers to the municipal clerk in a securely sealed carrier envelope that is clearly marked “used absentee certificate envelopes.” The envelopes shall be signed by each member of the board of absentee ballot canvassers. Except when the ballots are used in a municipal or school district election only, the municipal clerk shall transmit the used envelopes to the county clerk.

(5) (a) The vote of any absent elector may be challenged by any elector for cause and the board of absentee ballot canvassers shall have all the power and authority given the inspectors to hear and determine the legality of the ballot the same as if the ballot had been voted in person.

(b) For the purpose of deciding upon ballots that are challenged for any reason, the board of absentee ballot canvassers may call before it any person whose absentee ballot is challenged if the person is available to be called. If the person challenged refuses to answer fully any relevant questions put to him or her by the board of absentee ballot canvassers under s. 6.92, the board of absentee ballot canvassers shall reject the person’s vote. If the challenge is not withdrawn after the person offering to vote has answered the questions, one of the members of the board of absentee ballot canvassers shall administer to the person the following oath or affirmation: “You do solemnly swear (or affirm) that: you are 18 years of age; you are a citizen of the United States; you are now and for 28 consecutive days have been a resident of this ward except under s. 6.02 (2), stats.; you have not voted at this election; you have not made any bet or wager or become directly or indirectly interested in any bet or wager depending upon the result of this election; you are not on any other ground disqualified to vote at this election.” If the person challenged refuses to take the oath or affirmation, the person’s vote shall be rejected. If the person challenged answers fully all relevant questions put to the elector by the board of absentee ballot canvassers under s. 6.92, takes the oath or affirmation, and fulfills the applicable registration requirements, and if the answers to the questions given by the person indicate that the person meets the voting qualification requirements, the person’s vote shall be received.

(6) The board of absentee ballot canvassers shall review each certificate envelope to determine whether any absentee ballot is cast by an elector whose name appears on the poll list as ineligible to vote at the election, including ineligibility to vote by reason of a felony conviction. If the board of absentee ballot canvassers receives an absentee ballot that has been cast by an elector whose name appears on the poll list as ineligible to vote, the inspectors shall challenge the ballot in the same manner as provided for inspectors making challenges under s. 6.92 and shall treat the ballot in the manner as provided for treatment of challenged ballots by inspectors under s. 6.95.

(7) The board of absentee ballot canvassers shall maintain tally sheets on forms provided by the municipal clerk, which shall state the total number of votes cast for each office and for each individual receiving votes for that office, whether or not the individual’s name appears on the ballot, and shall state the vote for and against each proposition voted on. Upon completion of the canvass of the absentee ballots, the board of absentee ballot canvassers shall immediately complete statements in duplicate. The statements shall state the excess, if any, by which the number of ballots exceeds the number of electors voting as shown by the poll list used by the board of absentee ballot canvassers under this section and shall state the poll list number of the last elector as shown by the poll list. Each member of the board of absentee ballot canvassers shall then certify to the correctness of the statements and tally sheets and sign their names. All other election officials assisting with the tally shall also certify to the correctness of the tally sheets. When the tally is complete, the board of absentee ballot canvassers shall publicly announce the results from the statements, and the records of the count are open to public inspection and copying under s. 19.35 (1).

(8) The board of absentee ballot canvassers shall make full and accurate return of the votes cast for each candidate and proposition on the tally sheet forms. Each tally sheet shall record the returns for each office or referendum by ward, unless combined returns are authorized in accordance with s. 5.15 (6) (b), in which case the tally sheet shall record the returns for each group of combined wards. After recording the votes, the board of absentee ballot canvassers shall seal in a carrier envelope outside the ballot bag or container one inspector’s statement under sub. (4) (d), one tally sheet, and one poll list for delivery to the county clerk, unless the election relates only to school district offices or referenda or municipal offices or referenda. The board of absentee ballot canvassers shall also similarly seal one statement, one tally sheet, and one poll list for delivery to the municipal clerk.

(9) The governing body of any municipality that has provided by ordinance enacted under sub. (1) for the canvassing of absentee ballots at all elections held in the municipality under this section may by similar action rescind that decision. Thereafter, the absentee ballots at all elections held in the municipality shall be canvassed as provided in s. 6.88.

History: 2005 a. 451; 2011 a. 23, 75, 115, 227; 2015 a. 118; 2017 a. 59.

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

under this paragraph and any canvass that is conducted under s. 7.52 and ascertainment of the results by the inspectors or, in municipalities where absentee ballots are canvassed under s. 7.52, by the inspectors and the board of absentee ballot canvassers, the municipal clerk shall publicly read to the inspectors or the board of absentee ballot canvassers the names of the persons voted for and the number of votes for each person for each municipal office, the names of the persons declared by the inspectors or board of absentee ballot canvassers to have won nomination or election to each municipal office, and the number of votes cast for and against each municipal referendum question.

(b) Solely for purposes of the reconvention of a board of canvassers under par. (a) for a specific election, the municipal clerk may determine to replace the members of the board of canvassers with a 3-member board of canvassers consisting of the clerk, the chief inspector, and one other inspector who shall be appointed by the clerk. If the municipal clerk is a candidate at the election being canvassed or is unable to serve, the other 2 members shall appoint a qualified elector of the municipality to serve in place of the clerk. If one of the other members is unable to serve, the municipal clerk shall appoint a qualified elector of the municipality to serve in place of that member. The person or persons making any appointment under this paragraph shall do so by letter which shall be signed by the person or persons, dated, and filed in the office of the municipal clerk. Upon the appointment and qualification of all members, the reconstituted board of canvassers shall then reconvene and carry out its responsibilities under par. (a).

(2) MUNICIPALITIES WITH 2 OR MORE WARDS. (a) 1. Except as provided in par. (c), the municipal board of canvassers for municipal elections in each municipality utilizing more than one polling place shall be composed of the municipal clerk and 2 other qualified electors of the municipality appointed by the clerk. The members of the board of canvassers shall serve for 2-year terms commencing on January 1 of each even-numbered year, except that any member who is appointed to fill a permanent vacancy shall serve for the unexpired term of the original appointee.

2. If the municipal clerk's office is vacant or if the clerk cannot perform his or her duties, the mayor, president or board chairperson of the municipality shall designate another qualified elector of the municipality to serve in lieu of the clerk for that election.

3. If the clerk is a candidate at an election being canvassed, the clerk may perform his or her duties on the board of canvassers only if the clerk does not have an opponent whose name appears on the ballot, or in the case of a recount, if the office the clerk is seeking is not a subject of the recount. If the clerk is a candidate at the election being canvassed and has an opponent whose name appears on the ballot or if the office the clerk is seeking is a subject of a recount, the mayor, president or board chairperson of the municipality shall designate another qualified elector of the municipality to serve in lieu of the clerk for that election.

4. If any other member of the board of canvassers is a candidate at the election being canvassed, the clerk shall appoint another qualified elector of the municipality to temporarily fill the vacancy.

(c) In cities of more than 500,000 population, the board of election commissioners shall act as the board of canvassers.

(cm) If one or more temporary vacancies on the municipal board of canvassers reduces the number of members to less than 3, the municipal clerk shall appoint a member to fill each vacancy, except in cities of more than 500,000 population. In cities of more than 500,000 population, the executive director of the board of election commissioners shall serve as a member of the board of canvassers to fill a temporary vacancy on that board.

(d) In municipalities with one polling place, the canvass shall be conducted under sub. (1) publicly on election night. In other municipalities, the municipal board of canvassers shall publicly canvass the returns of every election. The canvass shall begin no earlier than the time that the municipal board of canvassers receives the returns from all polling places in the municipality on

election night and no later than 9 a.m. on the Monday after the election. After any canvass of the absentee ballots is completed under s. 7.52, the board of canvassers shall reconcile the poll list of the electors who vote by absentee ballot with the corresponding poll list of the electors who vote in person to ensure that no elector is allowed to cast more than one ballot. If an elector who votes in person has submitted an absentee ballot, the absentee ballot is void. At the spring election, the board of canvassers shall publicly declare the results on or before the 3rd Tuesday in April. The board of canvassers shall prepare a statement showing the results of each election for any municipal office and each municipal referendum. After each primary for municipal offices, the board of canvassers shall prepare a statement certifying the names of those persons who have won nomination to office. After each other election for a municipal office and each municipal referendum, the board of canvassers shall prepare a determination showing the names of the persons who are elected to each municipal office and the results of each municipal referendum. The board of canvassers shall file each statement and determination in the office of the municipal clerk or board of election commissioners.

(2m) BOARD OF ABSENTEE BALLOT CANVASSERS. (a) If a municipality elects to count absentee ballots in the manner provided for in s. 7.52, the municipality shall establish a board of absentee ballot canvassers as provided in par. (b).

(b) Except as provided in par. (c), the municipal board of absentee ballot canvassers shall be composed of the municipal clerk, or a qualified elector of the municipality designated by the clerk, and 2 other qualified electors of the municipality appointed by the clerk. The members of the board of absentee ballot canvassers shall serve for 2-year terms commencing on January 1 of each even-numbered year, except that any member who is appointed to fill a permanent vacancy shall serve for the unexpired term of the original appointee. If the municipal clerk's office is vacant or if the clerk and the clerk's designee cannot perform his or her duties, the mayor, president, or board chairperson of the municipality shall designate another qualified elector of the municipality to serve in lieu of the clerk for that election. If the clerk is a candidate at an election being canvassed, the clerk or the clerk's designee may perform the clerk's duties on the board of absentee ballot canvassers only if the clerk does not have an opponent whose name appears on the ballot. If the clerk is a candidate at the election being canvassed by the board of absentee ballot canvassers and has an opponent whose name appears on the ballot, the mayor, president, or board chairperson of the municipality shall designate another qualified elector of the municipality to serve in lieu of the clerk and his or her designee for that election. If any other member of the board of absentee ballot canvassers is a candidate at the election being canvassed, the clerk shall appoint another qualified elector of the municipality to temporarily fill the vacancy.

(c) Nothing in this subsection precludes a municipal clerk from appointing individuals to the board of absentee ballot canvassers who are simultaneously serving on any other board of canvassers.

(3) SCHOOL DISTRICT ELECTIONS. (a) In a common, union high or unified school district, the school district clerk shall appoint 2 qualified electors of the school district prior to the date of the election being canvassed who shall, with the school district clerk, constitute the school district board of canvassers. If the school district clerk is a candidate at the election being canvassed, the other 2 members of the board of canvassers shall designate a 3rd member to serve in lieu of the clerk for that election. The school district clerk shall appoint a member to fill any other temporary vacancy on the board of canvassers. The canvass shall begin no later than 9 a.m. on the Tuesday after the election, and shall continue, without adjournment, until completed. The board of canvassers may return defective returns to the municipal board of canvassers in the manner provided in s. 7.60 (3). If the board of canvassers meets before 4 p.m. on the Monday after the election and thereafter receives amended statements, tally sheets, and lists from a municipi-

pal clerk for provisional ballots that are eligible to be counted under s. 6.97 (4), the board of canvassers shall reconvene no later than 9 a.m. on the Tuesday after the election and shall adjust the returns accordingly. No later than 4 p.m. on the Tuesday after the election, the board of canvassers shall complete the canvass and shall prepare a written statement showing the numbers of votes cast for each person for each office and for and against each question and shall prepare a determination showing the names of the persons who are elected to the school board and the results of any school district referendum. Following each primary election, the board of canvassers shall prepare a statement certifying the names of the persons who have won nomination to the school board. Each statement and determination shall be attested by each of the canvassers. The board of canvassers shall file each statement and determination in the school district office. The school district clerk shall certify nominations after each primary and issue certificates of election to persons who are elected to the school board after each election in the manner provided in sub. (4).

(b) In a 1st class city school district, the municipal board of canvassers or election commissioners shall determine the results of school district elections and referenda and shall file a written statement and determination of the results for each election and referendum in the office of the city clerk or board of election commissioners. The board of election commissioners or city clerk shall certify nominations after each primary and issue certificates of election to persons who are elected to the board of school directors after each election in the manner provided in sub. (4).

(4) **CERTIFICATE OF ELECTION.** As soon as the deadline for filing a petition for a recount has passed, the municipal clerk shall issue promptly a certificate of election to each person elected to any municipal office, except that the municipal clerk need not wait until expiration of the time allowed to file a petition for a recount if there is no aggrieved party, as defined in s. 9.01 (1) (a) 5. When a valid petition for a recount is filed, the municipal clerk shall not issue the certificate of election for the office in question until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided.

(5) **LIVE BROADCASTS.** If a municipality or county or the commission broadcasts canvassing proceedings live in any election, including by live stream on the Internet, the municipality, county, or commission shall record the broadcast. The municipal clerk, county clerk, or commission shall retain the recording for the period specified in s. 7.23 (1) (f), unless, in good faith, the municipal clerk, county clerk, or commission is unable to retain the recording because the recording is maintained on an Internet video streaming service that goes out of business or is otherwise removed from the Internet, if the service has been in operation for at least 10 years and has at least 1,000,000 account holders at the time the municipal clerk, county clerk, or commission posts the recording to the service.

History: 1971 c. 304 s. 29 (2); 1977 c. 290, 427, 447; 1979 c. 260; 1981 c. 314; 1983 a. 183, 484; 1985 a. 225; 1985 a. 304 ss. 93, 155; 1987 a. 391; 1989 a. 192; 1995 a. 16 s. 2; 1999 a. 182; 2005 a. 451; 2007 a. 96; 2011 a. 115; 2015 a. 37, 229, 261; 2019 a. 182; 2023 a. 53.

The canvassing activities conducted at the municipal level pursuant to this section and by school district canvassing boards constitute meetings of governmental bodies and are subject to the requirements of the open meetings law. **OAG 5–14.**

While canvassing boards must provide the public a reasonable opportunity to meaningfully observe their meetings, they may impose reasonable limits on public access to the extent necessary to protect the effective and orderly conduct of the canvass. The same principles of reasonableness govern the public's opportunity to inspect election documents and materials at canvassing board meetings. **OAG 5–14.**

7.54 Contested elections. In all contested election cases, the contesting parties have the right to have the ballots opened and to have all errors of the inspectors, either in counting or refusing to count any ballot, corrected by the board of canvassers or court deciding the contest. The ballots and related materials may be opened only in open session of the board of canvassers or in open court and in the presence of the official having custody of them.

History: 1983 a. 484.

This section does not apply when an appeal of the result of a recount by the board of canvassers under s. 9.01 is before an appellate court. *Sewell v. Racine Unified*

School District Board of Canvassers, 2022 WI 18, 401 Wis. 2d 58, 972 N.W.2d 155, 20–1271.

7.60 County canvass. (1) KEEP OFFICE OPEN. On election night the county clerk shall keep the clerk's office open to receive reports from the ward inspectors and shall post all returns. On election night the clerk shall post all returns, by ward or reporting unit, on an Internet site maintained by the county no later than 2 hours after receiving the returns.

(2) **COUNTY BOARD OF CANVASSERS.** The county clerk and 2 qualified electors of the county appointed by the clerk constitute the county board of canvassers. The members of the board of canvassers shall serve for 2-year terms commencing on January 1 of each even-numbered year, except that any member who is appointed to fill a permanent vacancy shall serve for the unexpired term of the original appointee. One member of the board of canvassers shall belong to a political party other than the clerk's. The county clerk shall designate a deputy clerk who shall perform the clerk's duties as a member of the board of canvassers in the event that the county clerk's office is vacant, or the clerk cannot perform his or her duties. If the county clerk and designated deputy clerk are both unable to perform their duties, the county executive or, if there is no county executive, the chairperson of the county board of supervisors shall designate another qualified elector of the county to perform the clerk's duties. If a member other than the clerk cannot perform his or her duties, the clerk shall appoint another member to serve. Except as otherwise provided in this subsection, no person may serve on the county board of canvassers if the person is a candidate for an office to be canvassed by that board. If the clerk is a candidate at an election being canvassed, the clerk may perform his or her duties on the board only if the clerk has no opponent whose name appears on the ballot, or, in the case of a recount, if the office the clerk is seeking is not a subject of the recount. If lists of candidates for the county board of canvassers are submitted to the county clerk by political party county committees, the lists shall consist of at least 3 names and the clerk shall choose the board members from the lists. Where there is a county board of election commissioners, it shall serve as the board of canvassers. If the county board of election commissioners serves as the board of canvassers, the executive director of the county board of election commissioners shall serve as a member of the board of canvassers to fill a temporary vacancy on that board.

(3) **CANVASSING.** Not later than 9 a.m. on the Tuesday after each election the county board of canvassers shall open and publicly examine the returns. If returns have not been received from any election district or ward in the county, they shall dispatch a messenger and the person having them shall deliver the returns to the messenger. If, on examination, any of the returns received are so informal or defective that the board cannot intelligently canvass them, they shall dispatch a messenger to deliver the returns back to the municipal board of canvassers with written specifications of the informalities or defects and command them to immediately complete the returns or remedy the defects in the manner required and deliver them to the messenger. Every messenger shall safely keep all returns, show them to no one but the municipal clerk and board of canvassers and deliver them to the county clerk with all possible dispatch. To acquire the necessary full returns and remedy any informalities or defects the county board of canvassers may adjourn not longer than one day at a time nor more than 2 days in all.

(4) **STATEMENTS AND DETERMINATIONS.** (a) The board of canvassers shall make separate duplicate statements showing the numbers of votes cast for the offices of president and vice president; state officials; U.S. senators and representatives in congress; state legislators; justice; court of appeals judge; circuit judges; district attorneys; and metropolitan sewerage commissioners, if the commissioners are elected under s. 200.09 (11) (am). If a municipal judge elected under s. 755.01 (4) serves a municipality that is located partially within the county and candidates for that

judgeship file nomination papers in another county, the board of canvassers shall prepare a duplicate statement showing the numbers of votes cast for that judgeship in that county for transmittal to the other county. For partisan candidates, the statements shall include the political party or principle designation, if any, next to the name of each candidate. The board of canvassers shall also prepare a statement showing the results of any county, technical college district, or statewide referendum. Each statement shall state the total number of votes cast in the county for each office; the names of all persons for whom the votes were cast, as returned; the number of votes cast for each person; and the number of votes cast for and against any question submitted at a referendum. The board of canvassers shall use one copy of each duplicate statement to report to the elections commission, technical college district board, or board of canvassers of any other county and shall file the other statement in the office of the county clerk or board of election commissioners.

(b) The board of canvassers shall then prepare a written determination, in duplicate where necessary, giving the names of the persons elected to any county office and to any municipal judgeship if the judge is elected under s. 755.01 (4) and candidates for that judgeship file nomination papers in that county. The board of canvassers shall likewise prepare a written determination showing the results of any county referendum. Following any primary election, the board of canvassers shall prepare a statement certifying the names of all persons who have won nomination to any county office or any municipal judgeship, if the judge is elected under s. 755.01 (4) and candidates for that judgeship file nomination papers in that county. The board of canvassers shall file all statements and determinations in the office of the county clerk or board of election commissioners.

(c) In preparing the statements and determinations, the board of canvassers shall carefully review the tally sheets and inspectors' statement. The board of canvassers may omit the names of individuals whose names do not appear on the ballot and who receive a comparatively small number of votes. The board of canvassers shall designate votes received by such individuals as scattering votes. The board of canvassers shall append to each statement and determination a tabulation of the votes cast at each election district, ward or combination of wards authorized under s. 5.15 (6) (b) in the county for each office and each individual, whether the votes are canvassed or not, as well as the total canvassed votes cast for each individual and each office, except where scattering votes are designated. If any votes are rejected, the board of canvassers shall specify the reasons therefor.

(d) Each statement and determination issued under pars. (a) and (b) shall be certified as correct and attested to by each canvasser's signature.

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

(b) If the board of canvassers becomes aware of a material mistake in the canvass of an election for state or national office or a statewide or technical college district referendum prior to the close of business on the day the elections commission receives returns from the last county board of canvassers with respect to that canvass, the board of canvassers may petition the elections commission to reopen and correct the canvass. The elections commission shall direct the canvass to be reopened and corrected if it determines that the public interest so requires. If the elections commission directs the canvass to be reopened, the board of canvassers shall reconvene and transmit a certified corrected copy of the canvass statement to the elections commission or secretary of the technical college district board.

(6) CERTIFICATE OF ELECTION. Immediately after expiration of the time allowed to file a petition for a recount the county clerk shall issue a certificate of election to each person who is elected to any county office, except that the county clerk need not wait until expiration of the time allowed to file a petition for a recount if there is no aggrieved party, as defined in s. 9.01 (1) (a) 5. The certificate notice shall state the amount of the required official bond, if any. When a petition for a recount is filed, the county clerk shall not issue the certificate of election for the office in question until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided.

(7) OFFICIAL CANVASS RECORD. After the certificates of election have been prepared under sub. (6), the county clerk shall retain one copy of the official canvass for county offices and referenda in his or her office for public inspection.

History: 1971 c. 304 s. 29 (2); 1973 c. 334 ss. 14, 57; 1975 c. 93, 199; 1977 c. 187, 427, 449; 1979 c. 221, 260, 355; 1981 c. 4; 1983 a. 442, 484, 538; 1985 a. 89, 304, 332; 1987 a. 391; 1989 a. 31; 1991 a. 316; 1993 a. 399; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 107, 109; 2005 a. 451; 2007 a. 1; 2011 a. 75, 115; 2015 a. 118, 229, 261; 2019 a. 182.

The canvassing activities conducted by county canvassing boards are meetings of governmental bodies subject to the requirements of the open meetings law. While canvassing boards must provide the public a reasonable opportunity to meaningfully observe their meetings, they may impose reasonable limits on public access to the extent necessary to protect the effective and orderly conduct of the canvass. The same principles of reasonableness govern the public's opportunity to inspect election documents and materials at canvassing board meetings. OAG 5–14.

7.70 State canvass. (1) RECORDING AND PRESERVING RETURNS. (a) Upon receipt of the certified statements from the county clerks, the commission shall record the election results by counties and file and carefully preserve the statements.

(b) If any county clerk fails or neglects to forward any statements, the commission may require the clerk to do so immediately and if not received by the 8th day after a primary, or by the 11th day after any other election, the commission may dispatch a special messenger to obtain them. Whenever it appears upon the face of any statement that an error has been made in reporting or computing, the commission may return it to the county clerk for correction.

(3) CANVASSING. (a) The chairperson of the commission or a designee of the chairperson appointed by the chairperson to canvass a specific election shall publicly canvass the returns and make his or her certifications and determinations on or before the 2nd Tuesday following a spring primary, the 15th day of May following a spring election, the 3rd Wednesday following a partisan primary, the first day of December following a general election, the 2nd Thursday following a special primary, or within 18 days after any special election.

(b) The commission chairperson or the chairperson's designee shall examine the certified statements of the county boards of canvassers. If it appears that any material mistake has been made in the computation of votes, or any county board of canvassers failed to canvass the votes or omitted votes from any ward or election district in the county, the commission chairperson or the chairperson's designee may dispatch a messenger to the county clerk with written instructions to certify the facts concerning the mistake or the reason why the votes were not canvassed. A clerk to whom such instructions are delivered shall immediately make a true and full answer, sign it, affix the county seal and deliver it to the mes-

senger. The messenger shall deliver it with all possible dispatch to the commission.

(c) The chairperson of the commission or the chairperson's designee shall conclude the state canvass within 10 days after its commencement.

(d) When the certified statements and returns are received, the chairperson of the commission or the chairperson's designee shall proceed to examine and make a statement of the total number of votes cast at any election for the offices involved in the election for president and vice president; a statement for each of the offices of governor, lieutenant governor, if a primary, and a joint statement for the offices of governor and lieutenant governor, if a general election; a statement for each of the offices of secretary of state, state treasurer, attorney general, and state superintendent; for U.S. senator; representative in congress for each congressional district; the state legislature; justice; court of appeals judge; circuit judge; district attorney; metropolitan sewerage commission, if the commissioners are elected under s. 200.09 (11) (am); and for any referenda questions submitted by the legislature.

(e) The chairperson of the commission or the chairperson's designee shall make a special statement to the commission as soon as possible after the canvass of the general election certifying the name of each political party which receives at least one percent of the vote cast in such election for any statewide office.

(f) The statements shall show the persons' names receiving votes, and any referenda questions; the whole number of votes given to each; and an individual listing by the districts or counties in which they were given. The names of persons not regularly nominated who received only a comparatively small number of votes may be omitted and their votes designated as scattering votes.

(g) Following each primary election, the chairperson of the commission or the chairperson's designee shall prepare a statement certifying the results of the primary, which shall indicate the names of the persons who have won nomination to any state or national office. Following each other election, the chairperson of the commission or the chairperson's designee shall prepare a statement certifying the results of the election and shall attach to the statement a certificate of determination which shall indicate the names of persons who have been elected to any state or national office. The chairperson of the commission or the chairperson's designee shall likewise prepare a statement and certificate for any statewide referendum. The chairperson of the commission or the chairperson's designee shall deliver each statement and determination to the commission.

(h) Whenever a referendum question submitted to a vote of the people is approved, the commission shall record it and the secretary of state shall have the record bound in the volume containing the original enrolled laws passed at the next succeeding session of the legislature and have the record published with the laws thereof. Whenever a constitutional amendment or other statewide validating or ratifying referendum question which is approved by the people does not expressly state the date of effectiveness, it shall become effective at the time the chairperson of the commission or the chairperson's designee certifies that the amendment or referendum question is approved.

(i) The commission chairperson or the chairperson's designee shall canvass only regular returns made by the county board of canvassers and shall not count or canvass any additional or supplemental returns or statements made by the county board or any other board or person. The commission chairperson or the chairperson's designee shall not count or canvass any statement or return which has been made by the county board of canvassers at any other time than that provided in s. 7.60. This provision does not apply to any return made subsequent to a recount under s. 9.01, when the return is accepted in lieu of any prior return from the same county for the same office; or to a statement given to the commission chairperson or chairperson's designee or a messenger sent by the chairperson or designee to obtain a correction.

(5) CERTIFICATES OF ELECTION. (a) The commission shall record in its office each certified statement and determination made by the commission chairperson or the chairperson's designee. Immediately after the expiration of the time allowed to file a petition for recount, the commission shall make and transmit to each person declared elected a certificate of election under the seal of the commission, except that the commission need not wait until expiration of the time allowed to file a petition for recount if there is no aggrieved party, as defined in s. 9.01 (1) (a) 5. It shall also prepare similar certificates, attested by the commission administrator, addressed to the U.S. house of representatives, stating the names of those persons elected as representatives to the congress from this state. In the case of U.S. senators, the commission shall prepare a certificate of election for the governor's signature, and the governor shall sign and affix the great seal of the state and transmit the certificate to the president of the U.S. senate. The certificate shall be countersigned by the secretary of state. If a person elected was elected to fill a vacancy, the certificate shall so indicate. When a valid petition for recount is filed, the commission chairperson or the chairperson's designee may not certify a nomination, and the governor or commission may not issue a certificate of election until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided.

(b) For presidential electors, the commission shall prepare a certificate showing the determination of the results of the canvass and the names of the persons elected, and the governor shall sign, affix the great seal of the state, and transmit the certificate by registered mail to the U.S. administrator of general services. The governor shall also prepare 6 duplicate originals of such certificate and deliver them to one of the presidential electors on or before the first Monday after the 2nd Wednesday in December.

History: 1971 c. 304 s. 29 (2); 1973 c. 334 ss. 15, 57; 1975 c. 93, 199; 1977 c. 107, 187, 427, 449; 1979 c. 221, 260, 328; 1983 a. 484; 1985 a. 89, 304; 1987 a. 391; 1989 a. 31, 192; 1995 a. 16 s. 2; 1997 a. 27; 1999 a. 150 s. 672; 1999 a. 182; 2005 a. 451; 2007 a. 1; 2011 a. 32, 75; 2015 a. 118 ss. 93 to 95, 266 (10); 2019 a. 182.

Unless a constitutional amendment provides otherwise, it takes effect upon the certification of a statewide canvass of the votes as provided in sub. (3) (h). The legislature has the authority under article XII, section 1, of the Wisconsin Constitution to adopt reasonable election laws to provide that state constitutional amendments are effective after canvass and certification. *State v. Gonzales*, 2002 WI 59, 253 Wis. 2d 134, 645 N.W.2d 264, 01–0224.

Although the GAB chairperson or his or her designee is expressly required to "publicly canvass the returns" under sub. (3) (a), those canvassing activities are not subject to the separate requirements of the open meetings law. *OAG 5–14*.

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

(2) The presidential electors, when convened, shall vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them under s. 8.18, the candidates whose names appeared on the nomination papers filed under s. 8.20, or the candidate or candidates who filed their names under s. 8.185 (2), except that at least one of the persons for whom the electors vote may not be an inhabitant of this state. A presidential elector is not required to vote for a candidate who is deceased at the time of the meeting.

History: 1979 c. 246.

7.80 Notice of election. Personal service or service by first class mail of a certificate of election is official notification for all legal purposes to any person of his or her election to office.

History: 1977 c. 427.

State Statute 5.72:

5.72 Correcting ballot errors. (1) As soon as possible after ballots are delivered to the county clerk or to the municipal clerk if the municipality is preparing ballots under s. 7.15 (2), but not later than 3 weeks before any election relating to a state or national office or statewide referendum, **the county or municipal clerk preparing the ballots shall submit one copy of each ballot to the commission for review of possible errors.** If the contractor preparing the ballots supplies proofs in advance of ballot preparation, the clerk shall submit one copy of the proofs in lieu of actual ballots. If a voting machine ballot or other ballot combining local candidates or referenda with state or national candidates or referenda is used, the entire ballot shall be submitted, but if ballots intended for distribution to electors are used, only those ballots relating to state or national offices and statewide referenda need be submitted. This subsection does not require delay of ballot distribution or mailing of absentee ballots.

(2) **The commission shall review ballots and proof copies submitted under sub. (1) and shall notify the county and municipal clerk of any error as soon as possible but in no event later than 7 days after submission.** The clerk is not required to correct a ballot error upon receipt of notice of the error, unless ordered to do so under sub. (3) or s. 5.06 (6).

(3) Whenever an affidavit is filed by the commission or any elector alleging an error or omission in the preparation of a ballot, the circuit court for the county where the ballot is proposed to be used or its presiding judge, by order, may summarily require a county or municipal clerk to correct the error, or show cause why it should not be corrected and, by order, after the hearing, have the correction made.

History: 1979 c. 260; 1979 c. 311 s. 19; 1979 c. 355 ss. 9, 10; Stats. 1979 s. 5.72; 1981 c. 377; 1983 a. 484; 2015 a. 118 s. 266 (10).

CHAPTER 5

ELECTIONS — GENERAL PROVISIONS; BALLOTS AND VOTING SYSTEMS

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NOTE: 2005 Wis. Act 451, which made major revisions to the election laws, including to this chapter, contains an extensive prefatory note explaining the changes.

SUBCHAPTER I

GENERAL PROVISIONS

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 fully comply with some of their provisions.

(2) GENERAL PROVISIONS OF ELECTION LAWS APPLY. The general provisions of chs. 5 to 12 apply to all elections.

(3) PLURALITY SHALL ELECT. (a) Except as provided in par. (b), in every election to choose any officer, each elector has one vote for each office unless clearly indicated otherwise. The person receiving the greatest number of legal votes for the office shall be declared elected, and the canvassers shall so determine and certify.

(b) In an election to fill a nonpartisan state office, if no names are certified to appear on the ballot, no person may be declared elected.

(4) TIE VOTE. (a) If 2 or more candidates for the same office receive the greatest, but an equal number of votes, the winner shall be chosen by lot in the presence of the board of canvassers charged with the responsibility to determine the election, or in the case of an election for state or national office or metropolitan sewerage commissioner, if the commissioner is elected under s. 200.09 (1) (am), in the presence of the chairperson of the elections commission or the chairperson's designee.

(b) If, in a primary, 2 or more candidates receive an equal but not the greatest number of votes so that only one of those candi-

dates with equal votes may advance to the final election, the choice shall similarly be made by drawing lots.

(c) The candidates may, if all those tied for the same office are present, draw for themselves. Upon refusal or absence of any of the candidates, the board of canvassers shall appoint a competent person to draw, and upon the results declare and certify the winner.

(d) If a question is submitted to the electors and an equal number of votes are cast for and against adoption, the question fails adoption.

(5) ELECTION OF GOVERNOR AND LIEUTENANT GOVERNOR. (a) In every general election to choose the governor and the lieutenant governor, each elector shall have a single vote applicable to both offices. The persons receiving the greatest number of legal votes cast jointly for them for governor and lieutenant governor shall be declared elected, and the canvassers shall so determine and certify.

(b) In case 2 or more slates have an equal and the highest number of votes for governor and lieutenant governor, the 2 houses of the legislature shall at the next annual session choose by joint ballot one of the slates so having an equal and the highest number of votes for governor and lieutenant governor.

History: 1979 c. 89; 1983 a. 484; 1985 a. 304; 1997 a. 27; 1999 a. 150 s. 672; 1999 a. 182; 2015 a. 118.

The supreme court has quite consistently construed the provisions of election statutes as directory rather than mandatory so as to preserve the will of the elector. *Lanser v. Koconis*, 62 Wis. 2d 86, 214 N.W.2d 425 (1974).

When 40 percent of registered voters were denied ballots in an election to remove a county seat, the election was set aside even though the outcome probably was not affected. *McNally v. Tollander*, 100 Wis. 2d 490, 302 N.W.2d 440 (1981).

Sub. (1) applies only after an election has been held and the will of the people manifested. *City of Chippewa Falls v. Town of Hallie*, 231 Wis. 2d 85, 604 N.W.2d 300 (Ct. App. 1999), 99-0832.

Only substantial violations of the election law should operate to vacate an election. *Carlson v. Oconto County Board of Canvassers*, 2001 WI App 20, 240 Wis. 2d 438, 623 N.W.2d 195, 00-1788.

5.02 Definitions. In chs. 5 to 12, unless the context requires otherwise:

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(1c) “Automatic tabulating equipment” means apparatus which automatically examines and counts votes recorded on ballots or voting machines and tabulates the results.

(1e) “Ballot” means a ballot label, sheet of paper or envelope on which votes are recorded. The term also includes a sheet or card, filmstrip or other device listing or containing information relative to offices, candidates and referenda which is placed, projected or composed on the board or screen inside a voting machine.

(1q) “Block” means an area which is the smallest geographic area used by the U.S. bureau of the census for data collection and tabulation.

(2) “County clerk” includes the executive director of the county board of election commissioners and their authorized representatives.

(3) “Educational officer” means the state superintendent and school board members.

(3m) “Elected official” means an individual who is elected to a national, state or local office.

(4) “Election” means every public primary and election.

(4c) “Election district” means a municipality that is not divided into wards, except as otherwise provided in s. 8.17 (1) (b).

(4e) “Election official” means an individual who is charged with any duties relating to the conduct of an election.

(4g) “Election registration official” means an election official assigned under s. 6.28 (1) (a) or 7.30 to register electors.

(4m) “Electronic voting system” means a system in which votes are recorded on ballots, and the votes are subsequently counted and tabulated by automatic tabulating equipment. The term also includes a voting machine on which votes are recorded and tabulated by electronic means.

(4s) “Federal election” means any election at which a national office appears on the ballot.

(4v) For purposes of chs. 5 to 10 and 12, “filing officer” means the following:

(a) For a candidate for state office, as defined in sub. (23), the elections commission.

(b) For a candidate seeking local office, the clerk of the most populous jurisdiction for which the candidate seeks office.

(c) For a candidate for municipal judge elected under s. 755.01 (4), the county clerk or board of election commissioners of the county having the largest portion of the population in the jurisdiction served by the judge.

(d) For a candidate for school board member, the school district clerk.

NOTE: Sub. (4v) is created eff. 7–1–25 by 2023 Wis. Act 126.

(5) “General election” means the election held in even-numbered years on the Tuesday after the first Monday in November to elect United States senators, representatives in congress, presidential electors, state senators, representatives to the assembly, district attorneys, state officers other than the state superintendent and judicial officers, and county officers other than supervisors and county executives.

(6) “Governing body” means the common council of a city, board of supervisors of a town or board of trustees of a village.

(6m) “Identification” means any of the following documents issued to an individual:

(a) One of the following documents that is unexpired or if expired has expired after the date of the most recent general election:

1. An operator’s license issued under ch. 343.
2. An identification card issued under s. 343.50.
3. An identification card issued by a U.S. uniformed service.
4. A U.S. passport.

(b) A certificate of U.S. naturalization that was issued not earlier than 2 years before the date of an election at which it is presented.

(c) An unexpired driving receipt under s. 343.11.

(d) An unexpired identification card receipt issued under s. 343.50.

(e) An identification card issued by a federally recognized Indian tribe in this state.

(f) An unexpired identification card issued by a university or college in this state that is accredited, as defined in s. 39.30 (1) (d), or by a technical college in this state that is a member of and governed by the technical college system under ch. 38, that contains the date of issuance and signature of the individual to whom it is issued and that contains an expiration date indicating that the card expires no later than 2 years after the date of issuance if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

NOTE: In *Luft v. Evers*, 963 F.3d 665 (2020), the U.S. Court of Appeals for the 7th Circuit affirmed the judgment in *One Wisconsin Institute, Inc. v. Thomson*, 198 F. Supp. 3d 896 (2016), that “the student-ID provision is invalid” on the alternative ground that the restriction that a student ID card “is not sufficient for voting unless the student also shows proof of current enrollment” is unconstitutional.

(g) An unexpired veterans identification card issued by the veterans health administration of the federal department of veterans affairs.

(7) “Judge” means a court of appeals judge or a judge of a circuit court.

(8) “Justice” means a justice of the supreme court.

(8m) “Labor organization” means any employee organization in which employees participate and which exists primarily for the purpose of engaging in collective bargaining with any employer concerning grievances, labor disputes, wages, hours or conditions of employment, or the promotion and advancement of the professional or occupational standards and the welfare of its members and families and any organization established for the same purposes composed of individuals or affiliates of any such employee organization.

(9) “Local office” means any elective office other than a state or national office.

(10) “Municipal clerk” means the city clerk, town clerk, village clerk and the executive director of the city election commission and their authorized representatives. Where applicable, “municipal clerk” also includes the clerk of a school district.

(11) “Municipality” means city, town or village.

(12) “National office” means the offices of president and vice president of the United States, U.S. senator and representative in congress.

(12m) “Nickname” means a familiar or shortened form of a proper name by which an individual is commonly known.

(12n) “Overseas elector” means a U.S. citizen who is residing outside of the United States, who is not disqualified from voting under s. 6.03, who has attained or will attain the age of 18 by the date of an election at which the citizen proposes to vote, who was last domiciled in this state or whose parent was last domiciled in this state immediately prior to the parent’s departure from the United States, and who is not registered to vote or voting in any other state, territory, or possession.

(12s) “Partisan primary” means the primary held the 2nd Tuesday in August to nominate candidates to be voted for at the general election.

(13) “Political party” has the meaning given in s. 11.0101 (26).

(14) “Poll list” means the list which is compiled by election officials on election day showing the names and addresses of electors who actually cast votes in an election.

(15) “Polling place” means the actual location wherein the elector’s vote is cast.

(16) “Primary” means a primary election.

(16c) “Proof of identification” means identification that contains the name of the individual to whom the document was issued, which name conforms to the individual’s voter registration

form, if the individual is required to register to vote, and that contains a photograph of the individual, except as authorized in s. 343.14 (3m) or 343.50 (4g).

(16g) “Qualified circulator” means a qualified elector of this state or any 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.

(16m) “Recognized political party” means a political party which qualifies for a separate ballot or column under s. 5.62 (1) (b) or (2).

(16s) “Referendum” means an election at which an advisory, validating or ratifying question is submitted to the electorate.

(17) “Registration list” means the list of electors who are properly registered to vote.

(19) “Special election” means any election, other than those described in subs. (5), (12s), (21), and (22), to fill vacancies or to conduct a referendum.

(20) “Special primary” means the primary held 4 weeks before the special election except when the special election is held on the same day as the general election the special primary shall be held on the same day as the general primary or if the special election is held concurrently with the spring election, the primary shall be held concurrently with the spring primary.

(20g) “Special purpose district” means any local governmental unit other than a county or municipality.

(20r) “Special referendum” means any referendum held at a special election which is not held concurrently with the elections described in sub. (5), (12s), (21), or (22).

(21) “Spring election” means the election held on the first Tuesday in April to elect judicial, educational and municipal officers, nonpartisan county officers and sewerage commissioners and to express preferences for the person to be the presidential candidate for each party in a year in which electors for president and vice president are to be elected.

(22) “Spring primary” means the nonpartisan primary held on the 3rd Tuesday in February to nominate nonpartisan candidates to be voted for at the spring election.

(23) “State office” means the offices of governor, lieutenant governor, secretary of state, state treasurer, attorney general, state superintendent, justice of the supreme court, court of appeals judge, circuit court judge, state senator, state representative to the assembly and district attorney.

(24) “State superintendent” means the state superintendent of public instruction.

(24g) “Voting device” means an apparatus other than a voting machine which the elector uses to record his or her votes on a ballot.

(24r) “Voting machine” means a machine which serves in lieu of a voting booth and which mechanically or electronically records the votes cast by electors, who depress levers or buttons located next to the choices listed on a ballot to cast their votes.

(24w) “Voting system” means:

(a) The total combination of mechanical, electromechanical, or electronic equipment, including the software, hardware, and documentation required to program, control, and support the equipment, that is used to define ballots, to cast and count votes, to report or display election results, and to maintain and produce any audit trail information.

(b) The practices and associated documentation for any of the following purposes:

1. To identify equipment components and versions of such components.
2. To test the equipment during its development and maintenance.
3. To maintain records of equipment errors and defects.
4. To determine specific equipment changes to be made after the initial qualification of the equipment.

5. To make available any materials to an elector.

(25) “Ward” means a town, village or city subdivision created for the convenience of the electors therein and to facilitate the division of such municipalities into election districts of substantially equal population numbers along common boundaries observing the community of interest of existing neighborhoods and other settlements.

History: 1971 c. 211; 1971 c. 304 ss. 2, 29 (2); 1973 c. 280, 334; 1975 c. 93; 1977 c. 107, 187, 394; 1977 c. 427 ss. 3 to 14; 1977 c. 449; 1979 c. 32, 89, 221; 1979 c. 260 ss. 1m, 73 to 75; 1979 c. 311, 328; 1981 c. 4, 391; 1983 a. 484 ss. 5, 5c, 124m, 128; 1985 a. 303; 1985 a. 304 ss. 1m, 2, 155; 1987 a. 391 ss. 1 to 1r, 66w; 1989 a. 31; 1991 a. 5; 1993 a. 140, 184; 1995 a. 16 s. 2; 1995 a. 27 s. 9145 (1); 1995 a. 219; 1997 a. 35; 2001 a. 16, 109; 2003 a. 24, 265; 2005 a. 177, 451; 2007 a. 1; 2009 a. 397; 2011 a. 23, 32, 45, 75; 2013 a. 165; 2015 a. 117, 118, 261; 2017 a. 369; 2023 a. 126; s. 35.17 correction in (4v) (a).

Municipal clerks are the officials primarily responsible for election administration in Wisconsin. A “board of election commissioners” is established in Wisconsin’s high population cities and counties to carry out the duties otherwise accomplished by municipal and county clerks everywhere else. The phrase “municipal clerk or board of election commissioners” appears in tandem all over the election statutes because that describes the duties of local election officials. State ex rel. Zignego v. Wisconsin Elections Commission, 2021 WI 32, 396 Wis. 2d 391, 957 N.W.2d 208, 19–2397.

Photographic identification is necessary for in-person voting. Students may use college-issued credentials under sub. (6m) (f), but only before an ID’s expiration date. There’s nothing wrong with a requirement that IDs be current. Luft v. Evers, 963 F.3d 665 (2020).

Treating students differently from other potential voters without a rational basis violates the equal protection clause. Under sub. (6m) (f), a student identification card, alone among the sorts of photo ID that Wisconsin accepts, is not sufficient for voting unless the student also shows proof of current enrollment. No other category of acceptable identification depends on ongoing affiliation of any sort. That differential treatment violates the equal protection clause of the 14th amendment to the U.S. Constitution. Luft v. Evers, 963 F.3d 665 (2020).

The requirements in sub. (6m) (f) that a student identification card must display: 1) an issuance date; 2) an expiration date; 3) an expiration date not more than two years after the issuance date; and 4) a signature, are rationally related to a legitimate governmental interest and do not violate the equal protection clause. Common Cause v. Thomsen, 574 F. Supp. 3d 634 (2021).

5.025 Elections commission; definition. In chs. 5 to 10 and 12, “commission” means the elections commission.

History: 2015 a. 118 s. 2; Stats. 2015 s. 5.025.

5.05 Elections commission; powers and duties.

(1) GENERAL AUTHORITY. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

(b) In the discharge of its duties and after providing notice to any party who is the subject of an investigation, subpoena and bring before it any person and require the production of any papers, books, or other records relevant to an investigation. Notwithstanding s. 885.01 (4), the issuance of a subpoena requires action by the commission at a meeting of the commission. In the discharge of its duties, the commission may cause the deposition of witnesses to be taken in the manner prescribed for taking depositions in civil actions in circuit court.

(c) Bring civil actions to require a forfeiture for any violation of chs. 5 to 10 or 12. The commission may compromise and settle any civil action or potential action brought or authorized to be brought by it which, in the opinion of the commission, constitutes a minor violation, a violation caused by excusable neglect, or which for other good cause shown, should not in the public interest be prosecuted under such chapter. Notwithstanding s. 778.06, a civil action or proposed civil action authorized under this paragraph may be settled for such sum as may be agreed between the parties. Any settlement made by the commission shall be in such amount as to deprive the alleged violator of any benefit of his or her wrongdoing and may contain a penal component to serve as a deterrent to future violations. In settling civil actions or proposed civil actions, the commission shall treat comparable situations in a comparable manner and shall assure that any settlement bears a reasonable relationship to the severity of the offense or alleged offense. Except as otherwise provided in sub. (2m) (c) 15. and 16. and ss. 5.08 and 5.081, forfeiture actions brought by the commission shall be brought in the circuit court for the county where the defendant resides, or if the defendant is a nonresident

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of this state, in circuit court for the county wherein the violation is alleged to occur. For purposes of this paragraph, a person other than an individual resides within a county if the person's principal place of operation is located within that county. Whenever the commission enters into a settlement agreement with an individual who is accused of a civil violation of chs. 5 to 10 or 12 or who is investigated by the commission for a possible civil violation of one of those provisions, the commission shall reduce the agreement to writing, together with a statement of the commission's findings and reasons for entering into the agreement and shall retain the agreement and statement in its office for inspection.

(d) Sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief as may be appropriate to enforce any law regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensure its proper administration. No bond is required in such actions. Actions shall be brought in circuit court for the county where a violation occurs or may occur.

(e) Issue an order under s. 5.06, exempt a polling place from accessibility requirements under s. 5.25 (4) (a), exempt a municipality from the requirement to use voting machines or an electronic voting system under s. 5.40 (5m), approve an electronic data recording system for maintaining poll lists under s. 6.79, or authorize nonappointment of an individual who is nominated to serve as an election official under s. 7.30 (4) (e).

(f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.

(1e) ACTIONS BY THE COMMISSION. Any action by the commission, except an action relating to procedure of the commission, requires the affirmative vote of at least two-thirds of the members.

(2m) ENFORCEMENT. (a) The commission shall investigate violations of laws administered by the commission and may prosecute alleged civil violations of those laws, directly or through its agents under this subsection, pursuant to all statutes granting or assigning that authority or responsibility to the commission. Prosecution of alleged criminal violations investigated by the commission may be brought only as provided in par. (c) 11., 14., 15., and 16. and s. 978.05 (1). For purposes of this subsection, the commission may only initiate an investigation of an alleged violation of chs. 5 to 10 and 12, other than an offense described under par. (c) 12., based on a sworn complaint filed with the commission, as provided under par. (c). Neither the commission nor any member or employee of the commission, including the commission administrator, may file a sworn complaint for purposes of this subsection.

(c) 2. a. Any person may file a complaint with the commission alleging a violation of chs. 5 to 10 or 12. No later than 5 days after receiving a complaint, the commission shall notify each person who or which the complaint alleges committed such a violation. Before voting on whether to take any action regarding the complaint, other than to dismiss, the commission shall give each person receiving a notice under this subd. 2. a. an opportunity to demonstrate to the commission, in writing and within 15 days after receiving the notice, that the commission should take no action against the person on the basis of the complaint. The commission may not conduct any investigation or take any other action under this subsection solely on the basis of a complaint by an unidentified complainant.

am. If the commission finds, by a preponderance of the evidence, that a complaint is frivolous, the commission may order the complainant to forfeit not more than the greater of \$500 or the expenses incurred by the commission in investigating the complaint.

4. If the commission reviews a complaint and fails to find that there is a reasonable suspicion that a violation under subd. 2. has occurred or is occurring, the commission shall dismiss the complaint. If the commission believes that there is reasonable suspi-

cion that a violation under subd. 2. has occurred or is occurring, the commission may by resolution authorize the commencement of an investigation. The resolution shall specifically set forth any matter that is authorized to be investigated. To assist in the investigation, the commission may elect to retain a special investigator. If the commission elects to retain a special investigator, the administrator of the commission shall submit to the commission the names of 3 qualified individuals to serve as a special investigator. The commission may retain one or more of the individuals. If the commission retains a special investigator to investigate a complaint against a person who is a resident of this state, the commission shall provide to the district attorney for the county in which the person resides a copy of the complaint and shall notify the district attorney that it has retained a special investigator to investigate the complaint. For purposes of this subdivision, a person other than an individual resides within a county if the person's principal place of operation is located within that county. The commission shall enter into a written contract with any individual who is retained as a special investigator setting forth the terms of the engagement. A special investigator who is retained by the commission may request the commission to issue a subpoena to a specific person or to authorize the special investigator to request the circuit court of the county in which the specific person resides to issue a search warrant. The commission may grant the request by approving a motion to that effect at a meeting of the commission if the commission finds that such action is legally appropriate.

5. Each special investigator who is retained by the commission shall make periodic reports to the commission, as directed by the commission, but in no case may the interval for reporting exceed 30 days. If the commission authorizes the commission administrator to investigate any matter without retaining a special investigator, the administrator shall make periodic reports to the commission, as directed by the commission, but in no case may the reporting interval exceed 30 days. During the pendency of any investigation, the commission shall meet for the purpose of reviewing the progress of the investigation at least once every 90 days. The special investigator or the administrator shall report in person to the commission at that meeting concerning the progress of the investigation. If, after receiving a report, the commission does not vote to continue an investigation for an additional period not exceeding 90 days, the investigation is terminated at the end of the reporting interval. The commission shall not expend more than \$25,000 to finance the cost of an investigation before receiving a report on the progress of the investigation and a recommendation to commit additional resources. The commission may vote to terminate an investigation at any time. If an investigation is terminated, any complaint from which the investigation arose is deemed to be dismissed by the commission. Unless an investigation is terminated by the commission, at the conclusion of each investigation, the administrator shall present to the commission one of the following:

a. A recommendation to make a finding that probable cause exists to believe that one or more violations under subd. 2. have occurred or are occurring, together with a recommended course of action.

b. A recommendation for further investigation of the matter together with facts supporting that course of action.

c. A recommendation to terminate the investigation due to lack of sufficient evidence to indicate that a violation under subd. 2. has occurred or is occurring.

6. a. If the commission finds that there is probable cause to believe that a violation under subd. 2. has occurred or is occurring, the commission may authorize the commission administrator to file a civil complaint against the alleged violator. In such case, the administrator may request the assistance of special counsel to prosecute any action brought by the commission. If the administrator requests the assistance of special counsel with respect to any matter, the administrator shall submit to the commission the

names of 3 qualified individuals to serve as special counsel. The commission may retain one of the individuals to act as special counsel. The staff of the commission shall provide assistance to the special counsel as may be required by the counsel to carry out his or her responsibilities.

b. The commission shall enter into a written contract with any individual who is retained as special counsel setting forth the terms of the engagement. The contract shall set forth the compensation to be paid such counsel by the state. The contract shall be executed on behalf of the state by the commission and the commission shall file the contract in the office of the secretary of state. The compensation shall be charged to the appropriation under s. 20.510 (1) (br).

7. No individual who is appointed or retained by the commission to serve as special counsel or as a special investigator is subject to approval under s. 20.930.

9. At the conclusion of its investigation, the commission shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation under subd. 2. has occurred or is occurring. If the commission determines that no probable cause exists, it shall dismiss the complaint. Whenever the commission dismisses a complaint or a complaint is deemed to be dismissed under subd. 5., the commission shall immediately send written notice of the dismissal to the accused and to the party who made the complaint.

10. The commission shall inform the accused or his or her counsel of exculpatory evidence in its possession.

11. If the commission finds that there is probable cause to believe that a violation under subd. 2. has occurred or is occurring, the commission may, in lieu of civil prosecution of any matter by the commission, refer the matter to the district attorney for the county in which the alleged violator resides, or if the alleged violator is a nonresident, to the district attorney for the county where the matter arises, or if par. (i) applies, to the attorney general or a special prosecutor. For purposes of this subdivision, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

12. The commission shall, by rule, prescribe categories of civil offenses which the commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The commission may authorize the commission administrator to compromise and settle such alleged offenses in the name of the commission if the alleged offenses by an offender, in the aggregate, do not involve payment of more than \$2,500.

13. If a special investigator or the commission administrator, in the course of an investigation authorized by the commission, discovers evidence that a violation under subd. 2. that was not within the scope of the authorized investigation has occurred or is occurring, the special investigator or the administrator may present that evidence to the commission. If the commission finds that there is a reasonable suspicion that a violation under subd. 2. that is not within the scope of the authorized investigation has occurred or is occurring, the commission may authorize the special investigator or the administrator to investigate the alleged violation or may elect to authorize a separate investigation of the alleged violation as provided in subd. 4.

14. If a special investigator or the commission administrator, in the course of an investigation authorized by the commission, discovers evidence of a potential violation of a law that is not administered by the commission arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, the special investigator or the administrator may present that evidence to the commission. The commission may thereupon refer the matter to the appropriate district attorney specified in subd. 11. or may refer the matter to the attorney general. The attorney general may then commence a civil or criminal prosecution relating to the matter.

15. Except as provided in subd. 17., if the commission refers a matter to the district attorney specified in subd. 11. for prosecution of a potential violation under subd. 2. or 14. and the district attorney informs the commission that he or she declines to prosecute any alleged civil or criminal violation related to any matter referred to the district attorney by the commission, or the district attorney fails to commence a prosecution of any civil or criminal violation related to any matter referred to the district attorney by the commission within 60 days of the date of the commission's referral, the commission may refer the matter to the district attorney for another prosecutorial unit that is contiguous to the prosecutorial unit of the district attorney to whom the matter was originally referred. If there is more than one such prosecutorial unit, the chairperson of the commission shall determine the district attorney to whom the matter shall be referred by publicly drawing lots at a meeting of the commission. The district attorney may then commence a civil or criminal prosecution relating to the matter.

16. Except as provided in subd. 17., if the commission refers a matter to a district attorney under subd. 15. for prosecution of a potential violation under subd. 2. or 14. and the district attorney informs the commission that he or she declines to prosecute any alleged civil or criminal violation related to any matter referred to the district attorney by the commission, or the district attorney fails to commence a prosecution of any civil or criminal violation related to any matter referred to the district attorney by the commission within 60 days of the date of the commission's referral, the commission may refer the matter to the attorney general. The attorney general may then commence a civil or criminal prosecution relating to the matter.

17. The commission is not authorized to act under subd. 15. or 16. if a special prosecutor is appointed under s. 978.045 in lieu of the district attorney specified in subd. 11.

18. Whenever the commission refers a matter to special counsel or to a district attorney or to the attorney general under this subsection, the special counsel, district attorney, or attorney general shall report to the commission concerning any action taken regarding the matter. The report shall be transmitted no later than 40 days after the date of the referral. If the matter is not disposed of during that period, the special counsel, district attorney, or attorney general shall file a subsequent report at the end of each 30-day period following the filing of the initial report until final disposition of the matter.

(d) 1. No individual who serves as the commission administrator may have been a lobbyist, as defined in s. 13.62 (11). No such individual may have served in a partisan state or local office.

2. No employee of the commission, while so employed, may become a candidate, as defined in s. 11.0101 (1), for a state or partisan local office. No individual who is retained by the commission to serve as a special investigator or as special counsel may, while so retained, become a candidate, as defined in s. 11.0101 (1), for any state or local office. A filing officer shall decline to accept nomination papers or a declaration of candidacy from any individual who does not qualify to become a candidate under this paragraph.

(e) No individual who serves as an employee of the commission and no individual who is retained by the commission to serve as a special investigator or a special counsel may, while so employed or retained, make a contribution to a candidate for state or local office. No individual who serves as an employee of the commission and no individual who is retained by the commission to serve as a special investigator or as special counsel, for 12 months prior to becoming so employed or retained, may have made a contribution to a candidate for a partisan state or local office. In this paragraph, contribution has the meaning given in s. 11.0101 (8).

(f) Pursuant to any investigation authorized under par. (c), the commission has the power:

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1. To require any person to submit in writing such reports and answers to questions relevant to the proceedings as the commission may prescribe, such submission to be made within such period and under oath or otherwise as the commission may determine.

2. To order testimony to be taken by deposition before any individual who is designated by the commission and has the power to administer oaths, and, in such instances, to compel testimony and the production of evidence in the same manner as authorized by sub. (1) (b).

4. To pay witnesses the same fees and mileage as are paid in like circumstances by the courts of this state.

5. To request and obtain from the department of revenue copies of state income or franchise tax returns and access to other appropriate information under s. 71.78 (4) regarding all persons who are the subject of such investigation.

(h) If the defendant in an action for a civil violation of chs. 5 to 10 or 12 is a district attorney or a circuit judge or a candidate for either such office, the action shall be brought by the commission. If the defendant in an action for a civil violation of chs. 5 to 10 or 12 is the attorney general or a candidate for that office, the commission may appoint special counsel to bring suit on behalf of the state.

(i) If the defendant in an action for a criminal violation of chs. 5 to 10 or 12 is a district attorney or a circuit judge or a candidate for either such office, the action shall be brought by the attorney general. If the defendant in an action for a criminal violation of chs. 5 to 10 or 12 is the attorney general or a candidate for that office, the commission may appoint a special prosecutor to conduct the prosecution on behalf of the state.

(j) Any special counsel or prosecutor who is appointed under par. (h) or (i) shall be independent of the attorney general and need not be a state employee at the time of his or her appointment.

(k) The commission's power to initiate civil actions under this subsection for the enforcement of chs. 5 to 10 or 12 shall be the exclusive remedy for alleged civil violations of chs. 5 to 10 or 12.

(2q) SUPPLEMENTAL FUNDING FOR ONGOING INVESTIGATIONS. The commission may request supplemental funds to be credited to the appropriation account under s. 20.510 (1) (be) for the purpose of continuing an ongoing investigation initiated under sub. (2m). A request under this subsection shall be filed with the secretary of administration and the cochairpersons of the joint committee on finance in writing and shall contain a statement of the action requested, the purposes therefor, the statutory provision authorizing or directing the performance of the action, and information about the nature of the investigation for which the commission seeks supplemental funds, excluding the name of any individual or organization that is the subject of the investigation. If the cochairpersons of the joint committee on finance do not notify the secretary of administration that the committee has scheduled a meeting for the purpose of reviewing the request within 14 working days after the commission filed the request, the secretary shall supplement the appropriation under s. 20.510 (1) (be) from the appropriation under s. 20.505 (1) (d) in an amount not to exceed the amount the commission requested. If, within 14 working days after the commission filed the request, the cochairpersons of the joint committee on finance notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the commission's request under this subsection, the secretary may supplement the appropriation under s. 20.510 (1) (be) only with the committee's approval. The committee and the secretary shall notify the commission of all their actions taken under this subsection.

(2w) ELECTIONS COMMISSION. The elections commission has the responsibility for the administration of chs. 5 to 10 and 12.

(3d) ADMINISTRATOR. The commission shall appoint an administrator in the manner provided under s. 15.61 (1) (b). The administrator shall be outside the classified service. The administrator shall appoint such other personnel as he or she requires to carry out the duties of the commission and may designate a com-

mission employee to serve as the commission's legal counsel. The administrator shall perform such duties as the commission assigns to him or her in the administration of chs. 5 to 10 and 12.

(3g) CHIEF ELECTION OFFICER. The commission administrator shall serve as the chief election officer of this state.

(4) EMPLOYEES. All employees of the commission shall be nonpartisan.

(5e) ANNUAL REPORT. The commission shall submit an annual report under s. 15.04 (1) (d) and shall include in its annual report the names and duties of all individuals employed by the commission and a summary of its determinations and advisory opinions issued under sub. (6a). Except as authorized or required under sub. (5s) (f), the commission shall make sufficient alterations in the summaries to prevent disclosing the identities of individuals or organizations involved in the decisions or opinions. The commission shall identify in its report the statutory duties of the commission administrator, together with a description of the manner in which those duties are being fulfilled. Notwithstanding sub. (5s) and s. 12.13 (5), the commission shall also specify in its report the total number of investigations conducted by the commission since the last annual report and a description of the nature of each investigation. The commission shall make such further reports on the matters within its jurisdiction and such recommendations for further legislation as it deems desirable.

(5f) ADVICE TO COMMISSION. The joint committee on legislative organization shall be advisory to the commission on all matters relating to operation of the commission.

(5s) ACCESS TO RECORDS. Records obtained or prepared by the commission in connection with an investigation, including the full text of any complaint received by the commission, are not subject to the right of inspection and copying under s. 19.35 (1), except as follows:

(a) The commission shall permit inspection of records that are distributed or discussed in the course of a meeting or hearing by the commission in open session. The commission shall post on its Internet site the draft minutes of each meeting or hearing conducted by the commission in open session no later than 48 hours after the completion of the meeting or hearing. The commission shall post minutes approved by the commission no later than 48 hours after the minutes are approved. The commission may indicate whether minutes posted on its Internet site have been approved by the commission or are in draft form. Minutes posted pursuant to this paragraph shall include a summary of every action that the commission voted on, a record of each member's vote for or against every action requiring a vote, a record of all motions and seconds made by each member, including the full text of each motion debated and voted on by the commission, and a record of each member's status as being present or absent for any part of a meeting or hearing. The commission shall maintain all minutes published under this paragraph on its Internet site so that the minutes are accessible to the public at all times.

(am) The commission shall provide to the joint committee on finance records obtained or prepared by the commission in connection with an ongoing investigation when required under sub. (2q).

(b) Investigatory records of the commission may be made public in the course of a prosecution initiated under chs. 5 to 10 or 12.

(bm) The commission shall provide investigatory records to the state auditor and the employees of the legislative audit bureau to the extent necessary for the bureau to carry out its duties under s. 13.94.

(c) The commission shall provide information from investigation and hearing records that pertains to the location of individuals and assets of individuals as requested under s. 49.22 (2m) by the department of children and families or by a county child support agency under s. 59.53 (5).

(d) If the commission commences a civil prosecution of a person for an alleged violation of chs. 5 to 10 or 12 as the result of an investigation, the person who is the subject of the investigation

may authorize the commission to make available for inspection and copying under s. 19.35 (1) records of the investigation pertaining to that person if the records are available by law to the subject person and the commission shall then make those records available.

(e) The following records of the commission are open to public inspection and copying under s. 19.35 (1):

1. Any record of the action of the commission authorizing the filing of a civil complaint under sub. (2m) (c) 6.

2. Any record of the action of the commission referring a matter to a district attorney or other prosecutor for investigation or prosecution.

3. Any record containing a finding that a complaint does not raise a reasonable suspicion that a violation of the law has occurred.

4. Any record containing a finding, following an investigation, that no probable cause exists to believe that a violation of the law has occurred.

(f) The commission shall make public formal and informal advisory opinions and records obtained in connection with requests for formal or informal advisory opinions relating to matters under the jurisdiction of the commission, including the identity of individuals requesting such opinions or organizations or governmental bodies on whose behalf they are requested.

(5t) GUIDANCE FOLLOWING BINDING COURT DECISIONS. Within 2 months following the publication of a decision of a state or federal court that is binding on the commission and this state, the commission shall issue updated guidance or formal advisory opinions, commence the rule-making procedure to revise administrative rules promulgated by the commission, or request an opinion from the attorney general on the applicability of the court decision.

(6a) ADVISORY OPINIONS. (a) 1. Any individual, either personally or on behalf of an organization or governmental body, may make a request of the commission in writing, electronically, or by telephone for a formal or informal advisory opinion regarding the propriety under chs. 5 to 10 or 12 of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of the commission a formal or informal advisory opinion regarding the propriety under chs. 5 to 10 or 12 of any matter to which the prospective appointee is or may become a party. The commission shall review a request for an advisory opinion and may issue a formal or informal written or electronic advisory opinion to the person making the request. Except as authorized or required for opinions specified in sub. (5s) (f), the commission's deliberations and actions upon such requests shall be in meetings not open to the public. A member of the commission may, by written request, require the commission to review an advisory opinion.

2. To have legal force and effect, each formal and informal advisory opinion issued by the commission must be supported by specific legal authority under a statute or other law, or by specific case or common law authority. Each formal and informal advisory opinion shall include a citation to each statute or other law and each case or common law authority upon which the opinion is based, and shall specifically articulate or explain which parts of the cited authority are relevant to the commission's conclusion and why they are relevant.

3. No person acting in good faith upon a formal or informal advisory opinion issued by the commission under this subsection is subject to criminal or civil prosecution for so acting, if the material facts are as stated in the opinion request.

4. At each regular meeting of the commission, the administrator shall review informal advisory opinions requested of and issued by the administrator and that relate to recurring issues or issues of first impression for which no formal advisory opinion has been issued. The commission may determine to issue a formal advisory opinion adopting or modifying the informal advisory

opinion. If the commission disagrees with a formal or informal advisory opinion that has been issued by or on behalf of the commission, the commission may withdraw the opinion, issue a revised formal or informal advisory opinion, or request an opinion from the attorney general. No person acting after the date of the withdrawal or issuance of the revised advisory opinion is exempted from prosecution under this subsection if the opinion upon which the person's action is based has been withdrawn or revised in relevant degree.

5. Except as authorized or required under sub. (5s) (f), no member or employee of the commission may make public the identity of the individual requesting a formal or informal advisory opinion or of individuals or organizations mentioned in the opinion.

(b) 1. The commission may authorize the commission administrator or his or her designee to issue an informal written advisory opinion or transmit an informal advisory opinion electronically on behalf of the commission, subject to such limitations as the commission deems appropriate. Every informal advisory opinion shall be consistent with applicable formal advisory opinions issued by the commission, statute or other law, and case law.

2. Any individual may request in writing, electronically, or by telephone an informal advisory opinion from the commission under this paragraph. The commission's designee shall provide a written response, a written reference to an applicable statute or law, or a written reference to a formal advisory opinion of the commission to the individual, or shall refer the request to the commission for review and the issuance of a formal advisory opinion.

3. Any person receiving an informal advisory opinion under this paragraph may, at any time, request a formal advisory opinion from the commission on the same matter.

(c) 1. Any individual may request in writing, electronically, or by telephone a formal advisory opinion from the commission or the review or modification of a formal advisory opinion issued by the commission under this paragraph. The individual making the request shall include all pertinent facts relevant to the matter. The commission shall review a request for a formal advisory opinion and may issue a formal advisory opinion to the individual making the request. Except as authorized or required for opinions specified in sub. (5s) (f), the commission's deliberations and actions upon such requests shall be in meetings not open to the public.

2. Any person requesting a formal advisory opinion under this paragraph may request a public or private hearing before the commission to discuss the opinion. The commission shall grant a request for a public or private hearing under this paragraph.

3. Promptly upon issuance of each formal advisory opinion, the commission shall publish the opinion together with the information specified under sub. (5s) (f) on the commission's Internet site.

4. If the commission declines to issue a formal advisory opinion, it may refer the matter to the attorney general or to the standing legislative oversight committees.

(7) ADMINISTRATIVE MEETINGS AND CONFERENCES. The commission shall conduct regular information and training meetings at various locations in the state for county and municipal clerks and other election officials. Administrative meetings shall be designed to explain the election laws and the forms and rules of the commission, to promote uniform procedures and to assure that clerks and other officials are made aware of the integrity and importance of the vote of each citizen. The commission may conduct conferences relating to election laws, practice and procedure. The commission may charge persons attending the administrative meetings and conferences for its costs incurred in conducting the meetings and conferences at a rate not exceeding the per capita cost incurred by the commission.

(9) STANDING. The commission has standing to commence or intervene in any civil action or proceeding for the purpose of

enforcing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.

(10) **STATE ELECTION ADMINISTRATION PLAN.** With the approval of the joint committee on finance as provided in this subsection, the commission shall adopt and modify as necessary a state plan that meets the requirements of P.L. 107–252 to enable participation by this state in federal financial assistance programs authorized under that law. The commission shall adopt the plan and any modifications only after publishing a class 1 notice under ch. 985 or posting on the Internet a statement describing the proposed plan or modification and receiving public comment thereon. After approval of the proposed plan or any modification of the plan by the commission, the commission shall submit the proposed plan or modification to the joint committee on finance for the approval of the committee. The commission may adopt the proposed plan or modification only if the committee approves the proposed plan or modification.

(11) **AIDS TO COUNTIES AND MUNICIPALITIES.** From the appropriations under s. 20.510 (1) (t) and (x), the commission may provide financial assistance to eligible counties and municipalities for election administration costs in accordance with the plan adopted under sub. (10). As a condition precedent to receipt of assistance under this subsection, the commission shall enter into an agreement with the county or municipality receiving the assistance specifying the intended use of the assistance and shall ensure compliance with the terms of the agreement. Each agreement shall provide that if the federal government objects to the use of any assistance moneys provided to the county or municipality under the agreement, the county or municipality shall repay the amount of the assistance provided to the commission.

(12) **VOTER EDUCATION.** The commission may conduct or prescribe requirements for educational programs to inform electors about voting procedures, voting rights, and voting technology. The commission shall conduct an educational program for the purpose of educating electors who cast paper ballots, ballots that are counted at a central counting location, and absentee ballots of the effect of casting excess votes for a single office.

(13) **TOLL-FREE ELECTION INFORMATION AND REQUESTS.** (a) The commission shall maintain one or more toll-free telephone lines for electors to report possible voting fraud and voting rights violations, to obtain general election information, and to access information concerning their registration status, current polling place locations, and other information relevant to voting in elections.

(b) The commission may maintain a free access system under which an elector who votes under s. 6.96 or 6.97 may ascertain current information concerning whether the elector's vote has been counted, and, if the vote will not be counted, the reason that it will not be counted.

(c) The commission shall maintain a freely accessible system under which a military elector, as defined in s. 6.34 (1), or an overseas elector who casts an absentee ballot may ascertain whether the ballot has been received by the appropriate municipal clerk.

(d) The commission shall designate and maintain at least one freely accessible means of electronic communication which shall be used for the following purposes:

1. To permit a military elector, as defined in s. 6.34 (1), or an overseas elector to request a voter registration application or an application for an absentee ballot at any election at which the elector is qualified to vote in this state.
2. To permit a military elector or an overseas elector under subd. 1. to designate whether the elector wishes to receive the applications under subd. 1. electronically or by mail.
3. To permit a municipal clerk to transmit to a military elector or an overseas elector under subd. 1. a registration application or absentee ballot application electronically or by mail, as directed by the elector under subd. 2., together with related voting, balloting, and election information.

(14) **INFORMATION FROM COUNTY AND MUNICIPAL CLERKS.** (a) The commission may request information from county and municipal clerks relating to election administration, performance of electronic voting systems and voting machines, and use of paper ballots in elections.

(b) The commission shall establish a subscription service whereby a person may electronically access the absentee ballot information provided under s. 6.33 (5) (a), including semiweekly updates of such information.

(c) On election night the commission shall provide a link on its Internet site to the posting of each county's election returns on each county's Internet site.

(15) **REGISTRATION LIST.** The commission is responsible for the design and maintenance of the official registration list under s. 6.36. The commission shall require all municipalities to use the list in every election and may require any municipality to adhere to procedures established by the commission for proper maintenance of the list.

(16) **POLICIES AND PROCEDURES.** (a) Annually, the commission shall adopt written policies and procedures in order to govern its internal operations and management and shall annually report such policies and procedures to the appropriate standing committees of the legislature under s. 13.172 (3).

(b) Notwithstanding par. (a), the commission may reconsider at any time any policy or procedure adopted as provided under par. (a). If, upon reconsideration, the commission revises a previously reported policy or procedure, the commission shall report the revision to the appropriate standing committees of the legislature under s. 13.172 (3).

(c) The commission may reconsider at any time any written directives or written guidance provided to the general public or to any person subject to the provisions of chs. 5 to 10 and 12 with regard to the enforcement and administration of those provisions.

(17) **PAYMENTS.** The commission may accept payment by credit card, debit card, or other electronic payment mechanism for any amounts owed pursuant to the administration of chs. 5 to 10 or 12, and may charge a surcharge to the payer to recover charges associated with the acceptance of that electronic payment.

(18) **ELECTRONIC POLL LISTS.** The commission may facilitate the creation and maintenance of electronic poll lists for purposes of s. 6.79 including entering into contracts with vendors and establishing programs for development and testing.

History: 1973 c. 334; 1975 c. 85, 93, 199; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418, 427, 447; 1979 c. 32 s. 92 (8); 1979 c. 89, 154, 328; 1983 a. 27, 484, 524, 538; 1985 a. 303; 1985 a. 304 ss. 3, 155; 1989 a. 31, 192; 1999 a. 182; 2001 a. 109; 2003 a. 35, 265, 266, 327; 2005 a. 177; 2007 a. 1 ss. 2 to 19, 94, 99, 100, 103, 104, 107, 109, 111, 112, 114, 116, 127, 128; 2007 a. 20; 2009 a. 28, 180; 2011 a. 75; 2013 a. 20, 166; 2015 a. 2, 117; 2015 a. 118 ss. 3 to 54, 266 (10); 2015 a. 261; 2017 a. 365 s. 111; 2017 a. 366, 369; 2021 a. 38.

Cross-reference: See also EL, Wis. adm. code.

Notice to the district attorney, attorney general, or governor is not a prerequisite to a civil forfeiture under sub. (1) (c). *State Elections Board v. Hales*, 149 Wis. 2d 306, 440 N.W.2d 579 (Ct. App. 1989).

A party being investigated by the Wisconsin Elections Board is not entitled under sub. (1) (b) to attend and participate in all depositions conducted by the board. Notice to the party being investigated under sub. (1) (b) is limited to the board's exercise of its subpoena power and does not relate in any way to the conduct of depositions the board may wish to take. *State ex rel. Block v. Circuit Court*, 2000 WI App 72, 234 Wis. 2d 183, 610 N.W.2d 213, 00–0507.

County clerks are not to interpret Wisconsin's election laws and make declarations based on those interpretations. It is the Wisconsin Elections Commission that is responsible for guidance in the administration and enforcement of Wisconsin's election laws, not the county clerks. *Jefferson v. Dane County*, 2020 WI 90, 394 Wis. 2d 602, 951 N.W.2d 556, 20–0557.

Unless otherwise stated in a specific statute, criminal and civil forfeiture provisions of the election, lobby, and ethics laws can be enforced by a district attorney independently of the Government Accountability Board (GAB). A referral following an investigation by GAB is not required. A district attorney may request prosecutorial or investigative assistance from the attorney general in connection with any duty of the district attorney under those laws. If there has been a referral to the district attorney by GAB under sub. (2m) (c) 11., 14., or 15., the district attorney must retain ultimate supervisory authority over the matter referred unless a special prosecutor has been appointed to serve in lieu of the district attorney. OAG 10–08.

The Government Accountability Board (GAB) and district attorneys possess joint and co-equal authority to investigate possible violations of the election, lobby, or ethics laws and to prosecute civil forfeiture actions under those laws. Unless otherwise stated in a specific statutory provision, the district attorney possesses the authority to prosecute criminal proceedings under those laws. GAB has no statutory author-

ity to prosecute criminal proceedings under those laws except as stated in sub. (2m) (i). *OAG 10-08*.

For the attorney general to prosecute violations of the election, lobby, and ethics laws, there must be a specific statute authorizing the attorney general to independently initiate the prosecution of civil and criminal actions involving violations of those laws unless there is a referral to the attorney general by the Government Accountability Board under sub. (2m) (c) 16. or unless the attorney general or an assistant attorney general has been appointed as special prosecutor to serve in lieu of the district attorney. *OAG 10-08*.

Any cause of action under sub. (2m) to determine a candidate's ballot eligibility belongs to the Wisconsin Elections Commission rather than to individual voters. *Stencil v. Johnson, 605 F. Supp. 3d 1109 (2022)*.

5.055 Election assistance commission standards board. The commission administrator shall, in consultation with the commission, appoint an individual to represent this state as a member of the federal election assistance commission standards board. The administrator shall also conduct and supervise a process for the selection of an election official by county and municipal clerks and boards of election commissioners to represent local election officials of this state as a member of the federal election assistance commission standards board. The administrator shall ensure that the members of the federal election assistance commission standards board representing this state shall at no time be members of the same political party. Upon appointment or election of any new member of the federal election assistance commission standards board representing this state, the administrator shall transmit a notice of that member's appointment or election to the officer or agency designated by federal law.

History: 2003 a. 265; 2007 a. 1; 2015 a. 118.

5.056 Matching program with secretary of transportation. The commission administrator shall enter into the agreement with the secretary of transportation specified under s. 85.61 (1) to match personally identifiable information on the official registration list maintained by the commission under s. 6.36 (1) and the information specified in s. 6.34 (2m) with personally identifiable information maintained by the department of transportation.

History: 2003 a. 265; 2007 a. 1; 2015 a. 118, 261.

5.06 Compliance review; appeal. (1) Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. The complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. The complaint may be accompanied by relevant supporting documents. The commission may conduct a hearing on the matter in the manner prescribed for treatment of contested cases under ch. 227 if it believes such action to be appropriate.

(2) No person who is authorized to file a complaint under sub. (1), other than the attorney general or a district attorney, may commence an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in sub. (1) without first filing a complaint under sub. (1), nor prior to disposition of the complaint by the commission. A complaint is deemed disposed of if the commission fails to transmit an acknowledgment of receipt of the complaint within 5 business days from the date of its receipt or if the commission concludes its investigation without a formal decision.

(3) A complaint under this section shall be filed promptly so as not to prejudice the rights of any other party. In no case may a complaint relating to nominations, qualifications of candidates or ballot preparation be filed later than 10 days after the complainant knew or should have known that a violation of law or abuse of discretion occurred or was proposed to occur.

(4) The commission may, on its own motion, investigate and determine whether any election official, with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections, has failed to comply with the law or abused the discretion vested in him or her by law or proposes to do so.

(5) Upon receipt of a complaint under sub. (1), or upon its own motion, the commission may order any election official to immediately transfer to its possession any original documents in the custody of the official which the commission finds to be necessary and relevant to permit review of compliance with the laws concerning nominations, qualifications of candidates, ward division and numbering, recall or ballot preparation or the proper administration of such laws.

(6) The commission may, after such investigation as it deems appropriate, summarily decide the matter before it and, by order, require any election official to conform his or her conduct to the law, restrain an official from taking any action inconsistent with the law or require an official to correct any action or decision inconsistent with the law. The commission shall immediately transmit a copy of the order to the official. An order issued under this subsection is effective immediately or at such later time as may be specified in the order.

(7) The commission may withdraw, modify or correct an order issued under sub. (6) within a timely period if it finds such action to be appropriate.

(8) Any election official or complainant who is aggrieved by an order issued under sub. (6) may appeal the decision of the commission to circuit court for the county where the official conducts business or the complainant resides no later than 30 days after issuance of the order. Pendency of an appeal does not stay the effect of an order unless the court so orders.

(9) The court may not conduct a de novo proceeding with respect to any findings of fact or factual matters upon which the commission has made a determination, or could have made a determination if the parties had properly presented the disputed matters to the commission for its consideration. The court shall summarily hear and determine all contested issues of law and shall affirm, reverse or modify the determination of the commission, according due weight to the experience, technical competence and specialized knowledge of the commission, pursuant to the applicable standards for review of agency decisions under s. 227.57.

(10) This section does not apply to matters arising in connection with a recount under s. 9.01.

History: 1983 a. 484; 1985 a. 182 s. 57; 1985 a. 304; 1989 a. 192; 2015 a. 118 s. 266 (10).

The plaintiff's failure to comply with the method of review prescribed by this section deprived the circuit court of jurisdiction to hear the plaintiff's original action regarding election irregularities. *Kuechmann v. School District, 170 Wis. 2d 218, 487 N.W.2d 639 (Ct. App. 1992)*.

5.061 Compliance with federal Help America Vote Act.

(1) Whenever any person believes that a violation of Title III of P.L. 107–252 has occurred, is occurring, or is proposed to occur with respect to an election for national office in this state, that person may file a written, verified complaint with the commission.

(2) If the commission receives more than one complaint under sub. (1) relating to the same subject matter, the commission may consolidate the complaints for purposes of this section.

(3) A complainant under sub. (1) or any of the complainants in a consolidated complaint under sub. (2) may request a hearing and the matter shall then be treated as a contested case under ch. 227, except that the commission shall make a final determination

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with respect to the merits of the complaint and issue a decision within 89 days of the time that the complaint or the earliest of any complaints was filed, unless the complainant, or each of any complainants whose complaints are consolidated, consents to a specified longer period.

(4) If the commission finds the complaint to be without merit, it shall issue a decision dismissing the complaint. If the commission finds that the violation alleged in the complaint has occurred, is occurring, or is proposed to occur, the commission shall order appropriate relief, except that the commission shall not issue any order under this subsection affecting the right of any person to hold an elective office or affecting the canvass of an election on or after the date of that election.

History: 2003 a. 265; 2015 a. 118 s. 266 (10).

5.07 Action to compel compliance. Whenever a violation of the laws regulating the conduct of elections or election campaigns, other than a violation of the laws regulating campaign financing, occurs or is proposed to occur, the attorney general or the district attorney of the county where the violation occurs or is proposed to occur may sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief as may be appropriate to compel compliance with the law. No bond is required in such actions.

History: 1973 c. 334; 1983 a. 484 s. 136m; Stats. 1983 s. 5.07; 1985 a. 304; 2015 a. 118.

5.08 Petition for enforcement. In addition to or in lieu of filing a complaint, any elector may file a verified petition alleging such facts as are within his or her knowledge to indicate that an election official has failed or is failing to comply with any law regulating the conduct of elections or election campaigns, other than a law regulating campaign financing, or proposes to act in a manner inconsistent with such a law, and requesting that an action be commenced for injunctive relief, a writ of mandamus or prohibition or other such legal or equitable relief as may be appropriate to compel compliance with the law. The petition shall be filed with the district attorney for the county having jurisdiction to prosecute the alleged failure to comply under s. 978.05 (1) and (2). The district attorney may then commence the action or dismiss the petition. If the district attorney declines to act upon the petition or if the district attorney fails to act upon the petition within 15 days of the date of filing, the petitioner may file the same petition with the attorney general, who may then commence the action.

History: 1983 a. 484; 2007 a. 1; 2015 a. 118.

5.081 Petition for enforcement of voting rights. The attorney general shall accept a verified petition from any person alleging failure to comply with section 2 of the federal voting rights act, 42 USC 1973 (a) and (b). The attorney general may commence an action or proceeding in any court of competent jurisdiction on behalf of any elector of this state whose rights under 42 USC 1973 (a) and (b) are violated.

History: 1985 a. 312.

5.10 Presidential electors. Although the names of the electors do not appear on the ballot and no reference is made to them, a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector's vote is cast. Under chs. 5 to 12, all references to the presidential election, the casting of votes and the canvassing of votes for president, or for president and vice president, mean votes for them through their pledged presidential electors.

History: 1973 c. 334 s. 2; Stats. 1973 s. 5.10; 1977 c. 26; 1979 c. 89, 311.

5.15 Division of municipalities into wards. (1) (a) 1. Every city, village, and town in this state shall by ordinance or resolution of its common council or village or town board, respectively, be divided into wards as provided in this section, except as authorized in sub. (2). The boundaries of the wards established under this section, and the number assigned to each ward, are intended to be as permanent as possible, and to this end each ward

shall when created contain a population at a convenient point within the applicable population range under sub. (2) (b), with due consideration for the known trends of population increase or decrease within that part of the municipality in which the ward is located.

2. Once established, the boundaries of each ward shall remain unchanged until a further decennial federal census of population indicates that the population of a ward is then above or below the applicable population range, or until the ward boundaries are required to be changed to permit creation of supervisory or aldermanic districts of substantially equal population or to enhance the participation of members of a racial or language minority group in the political process and their ability to elect representatives of their choice, or until otherwise authorized or required under this section.

3. If the population of a ward has increased above the maximum of its population range or if the population of a ward must be decreased for a reason specified in subd. 2., the ward shall be divided into 2 or more wards in compliance with sub. (2) (b). If the population of a ward has decreased below the minimum of its population range or if the population of a ward must be increased for a reason specified in subd. 2., the ward shall, if possible, be combined with an adjoining ward, or the underpopulated ward and one adjoining ward shall be combined and together subdivided into 2 or more wards in compliance with sub. (2).

(b) Except as authorized in sub. (2) (a), within 60 days after the receipt of a tentative supervisory district plan and written statement, if any, from the county board of each county in which a municipality is located, the governing body of the municipality shall adjust its wards according to the schedule shown in sub. (2). All territory contained within the municipality, and only the territory so contained, on April 1 of the year of the federal decennial census shall be contained within a ward established under the division ordinance or resolution. Except as authorized in sub. (2), each ward shall consist of whole blocks, as utilized by the U.S. bureau of the census in the most recent federal decennial census. To suit the convenience of the voters residing therein each ward shall, as far as practicable, be kept compact and observe the community of interest of existing neighborhoods and other settlements. All territory within a ward shall be contiguous, except for island territory as defined in sub. (2) (f) 3. Enactment or adoption of a division ordinance or resolution requires the affirmative vote of a majority of the members of the governing body.

(c) The wards established by municipal governing bodies in a division ordinance or resolution enacted or adopted under this section shall govern the adjustment of supervisory districts under s. 59.10 (2) (a) and (3) (b) and of aldermanic districts under s. 62.08 (1) for the purpose of local elections beginning on January 1 of the 2nd year commencing after the year of the census until revised under this section on the basis of the results of the next decennial census of population unless adjusted under sub. (2) (f) 4. or 5., (6) (a), or (7), or unless a division is required to effect an act of the legislature redistricting legislative districts under article IV, section 3, of the constitution or redistricting congressional districts. The populations of wards under each decennial ward division shall be determined on the basis of the federal decennial census and any official corrections to the census issued on or before the date of adoption of the division ordinance or resolution to reflect the correct populations of the municipality and the blocks within the municipality on April 1 of the year of the census.

(d) Every ward shall be wholly contained within a single county.

(2) (a) Except as required by par. (d), no city electing its common council at large in which the total population is less than 1,000, and no village or town in which the total population is less than 1,000 is required to be divided into wards under this section, but any such city, village or town may divide itself into wards if the creation of wards facilitates the administration of elections.

No village or town located in a county having only one town is required to be divided into wards under this section.

(b) Except for wards created to effect an act of the legislature redistricting legislative districts under [article IV, section 3](#), of the constitution or redistricting congressional districts and except as authorized under pars. (bm), (c), (e), and (f) and sub. (7), wards shall contain the following numbers of inhabitants:

1. In any city in which the population is at least 150,000, each ward shall contain not less than 1,000 nor more than 4,000 inhabitants.

2. In any city in which the population is at least 39,000 but less than 150,000, each ward shall contain not less than 800 nor more than 3,200 inhabitants.

3. In any city, village or town in which the population is at least 10,000 but less than 39,000, each ward shall contain not less than 600 nor more than 2,100 inhabitants.

4. In any city, village or town in which the population is less than 10,000, each ward shall contain not less than 300 nor more than 1,000 inhabitants.

(bm) Every city electing the members of its common council from aldermanic districts shall assemble the blocks wholly or partially contained within the city into wards that will enable the creation of aldermanic districts that are substantially equal in population. If a block is partly contained within the city, the city shall divide the block to form a ward containing the portion of the block that lies within the city.

(c) If the population of a block exceeds the maximum population for a ward otherwise specified in this subsection, such block shall be constituted a ward by itself, except that if the population of a block substantially exceeds the population of proposed aldermanic districts in a city so that, if the block were to constitute an aldermanic district, the populations of the aldermanic districts in the city would not be substantially equal, the city shall divide the block to permit assembly into wards that will enable creation of aldermanic districts that are substantially equal in population.

(cm) Any division of blocks under this section shall be based on the best evidence available. In this paragraph, “best evidence” includes, but is not limited to, the population of the block and other information received from the U.S. bureau of the census and such data as number of housing units, utility connections and vehicle registrations or a special census conducted locally. For each ward so established, the population estimate shall be correlated with the results of the most recent federal decennial census, so that the total population reported for all wards in the municipality agrees with the census results.

(d) Every municipality shall make a good faith effort to accommodate the tentative plan submitted by the county or counties in which it is located under s. 59.10 (2) (a) or (3) (b) 1., and shall divide itself into wards in such a manner that will permit the creation of county supervisory districts in accordance with the population requirements for the plan specified in s. 59.10 (2) (a) or (3) (b) 1.

(e) If territory is detached from a city, village or town after April 1 of the year of the federal decennial census, and the remaining portion of the ward to which it was attached falls below the prescribed minimum population for the applicable range, the remaining portion of the population may be constituted a ward by itself.

(f) Any city, village or town may establish a ward below the prescribed minimum population for the applicable range whenever the proposed ward is established under par. (a), (d) or (e) or whenever the proposed ward contains solely:

1. That part of a city or village situated in a county other than the county in which the major part of the municipality is located.

2. That part of a city, village or town belonging to a school district other than the school district to which the major part of the municipality belongs.

3. Island territory containing a resident population. In this subdivision, “island territory” means territory surrounded by water, or noncontiguous territory which is separated by the territory of another municipality or by water, or both, from the major part of the municipality to which it belongs.

4. New territory which becomes a part of a city, village or town after April 1 of the year of the federal decennial census.

5. Territory that lies between an actual municipal boundary that existed on April 1 of the year of a federal decennial census and an intersecting municipal boundary that deviates from the actual municipal boundary on that date if the deviating boundary was used by the U.S. bureau of the census to enumerate the population of the municipality in that census.

(g) If a block is affected by an annexation or detachment which establishes a municipal boundary that subdivides the block, the municipalities in which the block is contained shall incorporate only the portion of the block contained within their boundaries in their division ordinances or resolutions.

(4) (a) Except as provided in par. (c), the division ordinance or resolution shall number all wards in the municipality with unique whole numbers in consecutive order, beginning with the number one, shall designate the polling place for each ward, and shall describe the boundaries of each ward consistent with the conventions set forth in s. 4.003. The ordinance or resolution shall be accompanied by a list of the block numbers used by the U.S. bureau of the census that are wholly or partly contained within each ward, with any block numbers partly contained within a ward identified, and a map of the municipality which illustrates the revised ward boundaries. If the legislature, in an act redistricting legislative districts under [article IV, section 3](#), of the constitution, or in redistricting congressional districts, establishes a district boundary within a municipality that does not coincide with the boundary of a ward established under the ordinance or resolution of the municipality, the municipal governing body shall, no later than April 10 of the 2nd year following the year of the federal decennial census on which the act is based, amend the ordinance or resolution to the extent required to effect the act. The amended ordinance or resolution shall designate the polling place for any ward that is created to effect the legislative act. Nothing in this paragraph shall be construed to compel a county or city to alter or redraw supervisory or aldermanic districts.

(b) Within 5 days after adoption or enactment of an ordinance or resolution under this section or any amendment thereto, the municipal clerk shall transmit one copy of the ordinance or resolution or the amendment to the county clerk of each county in which the municipality is contained, accompanied by the list and map specified in par. (a), together with a report confirming the boundaries of the municipality and of all wards in the municipality. Within 5 days after notice to the municipal clerk of a judgment that has the effect of changing the municipal boundaries, the clerk shall file the same report. The municipal clerk shall ensure that each copy of the ordinance or resolution or amendment and each accompanying report identify the name of the municipality and the county or counties in which it is located.

(bg) No later than October 15 of each year following the year of a federal decennial census, each municipal clerk shall file a report with the county clerk of each county in which the municipality is contained confirming the boundaries of the municipality and of all wards in the municipality. The report shall be accompanied by a map of the municipality and a list of the block numbers of which the municipality and each ward within the municipality are comprised. Each report filed under this paragraph shall identify the name of the municipality and the county or counties in which it is located.

(br) 1. Except as provided in subd. 2., no later than January 15 and July 15 of each year, the county clerk shall transmit to the legislative technology services bureau a report confirming the boundaries of each municipality, ward, and supervisory district in

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the county together with a map of the county, in an electronic format approved by the legislative technology services bureau. Each report shall be current to the nearest January 1 or July 1 preceding the date of the report.

2. In each year following the year of a federal decennial census, the July report shall instead be transmitted no later than November 1 and shall be current to the date of the report. The November 1 report shall be accompanied by a list of the block numbers of which the county and each municipality and ward within the county are comprised.

(c) Wards that are created to effect an act of the legislature redistricting legislative districts or congressional districts and wards authorized under sub. (2) (bm), (c), (e), or (f) or (7) may be numbered with a combination of whole numbers and letters.

(5) When a town is divided into wards, the annual town meeting shall be held in a location authorized under s. 60.11 (3) (a).

(6) (a) Following any municipality-wide special federal census of population, the governing body of the municipality in which the special census was held may, by ordinance or resolution, adjust the ward boundaries, but no ward line adjustment may cross the boundary of a congressional, assembly, or supervisory district. The municipal clerk shall transmit copies of the ordinance or resolution in compliance with sub. (4) (b).

(b) No later than 30 days before each election, the governing body of any municipality may by resolution combine 2 or more wards for voting purposes to facilitate using a common polling place. Whenever wards are so combined, the original ward numbers shall continue to be utilized for all official purposes. Except as otherwise authorized under this paragraph, every municipality having a population of 35,000 or more shall maintain separate returns for each ward so combined. In municipalities having a population of 35,000 or more, the governing body may provide in a resolution that returns for any ward having a population of 20 or less be combined with returns for any adjacent ward, if the total population of the combined wards does not exceed the applicable population range under sub. (2) (b) for wards in that municipality. In municipalities having a population of less than 35,000, the governing body may provide in the resolution that returns shall be maintained only for each group of combined wards at any election. Whenever a governing body provides that returns shall be maintained only for combined wards under this paragraph, the municipality shall report separate results for each separate ballot required under ss. 5.58 to 5.64. The municipal clerk shall transmit a copy of the resolution to the county clerk of each county in which the municipality is contained. In municipalities having a population of less than 35,000, the resolution shall remain in effect for each election until modified or rescinded, or until a new division is made under this section. Whenever needed for purposes of this paragraph, the municipal clerk shall determine the population of each ward in his or her municipality. If the population of a ward cannot be determined from census results, the clerk shall determine the population of the smallest unit encompassing the entire ward that can be determined from census results. The clerk shall then divide the land area of the ward by the land area of that unit. The clerk shall then multiply that result by the population of the unit to determine the population of the ward for purposes of this paragraph.

(7) If a new municipality is created or if part of a municipality is annexed to a city or village during a decennial period after April 1 of the year of the federal decennial census, the governing body of any municipality to which territory is attached or from which territory is detached, without regard to the time provisions of sub. (1) (b), may, by ordinance or resolution, create new wards or adjust the existing wards in that municipality to the extent required to reflect the change. If a municipality is consolidated with another municipality during a decennial period after April 1 of the year of the federal decennial census, the governing body of the consolidated municipality, without regard to the time provisions under sub. (1) (b), may, by ordinance or resolution, create new

wards or adjust the existing wards of the municipality to the extent required to reflect the change. No ward line adjustment under this subsection may cross the boundary of a congressional, assembly, or supervisory district. Within 5 days after adoption of the ordinance or resolution, the municipal clerk shall transmit copies of the ordinance or resolution making the adjustment to the county clerk in compliance with sub. (4) (b).

(8) Until divided, all elections are held in the established wards.

History: 1971 c. 304 ss. 3 to 5, 29 (2); 1977 c. 26, 418, 427, 449; 1979 c. 260; 1981 c. 4 ss. 2 to 10, 18; 1981 c. 314; 1983 a. 29, 192, 442; 1983 a. 484 ss. 8e, 174; 1983 a. 538; 1985 a. 304 ss. 8 to 10, 12; 1987 a. 391; 1991 a. 5, 143, 315; 1993 a. 213; 1995 a. 201; 1999 a. 182; 2005 a. 149, 312; 2011 a. 39, 75; 2013 a. 155; 2015 a. 55; 2017 a. 360.

Judicial relief is available if a county fails to follow the statutory requirements for redistricting. *City of Janesville v. County of Rock*, 107 Wis. 2d 187, 319 N.W.2d 891 (Ct. App. 1982).

The court properly voided the city's plan and adopted the county's plan, even though the county did not adopt the plan within 60 days of receiving census data. *County of La Crosse v. City of La Crosse*, 108 Wis. 2d 560, 322 N.W.2d 531 (Ct. App. 1982).

5.18 Enforcement of division requirement. If any municipality fails to comply with s. 5.15, the county in which the municipality is located or any elector of the municipality may submit to the circuit court for any county in which the municipality is located within 14 days from the expiration of the 60-day period under s. 5.15 (1) (b) a proposed plan for the division of the municipality into wards in compliance with this section. If the circuit court finds that the existing division of the municipality into wards fails to comply with s. 5.15, it shall review the plan submitted by the petitioner and after reasonable notice to the municipality may promulgate the plan, or any other plan in compliance with s. 5.15, as a temporary ward plan for the municipality to remain in effect until superseded by a ward plan enacted or adopted by the governing body in compliance with s. 5.15.

History: 1985 a. 304 ss. 9, 11, 12; 2011 a. 39.

5.25 Polling places. (1) All elections under chs. 5 to 12 shall be held at the polling places provided in this section. The places chosen shall be public buildings, unless the use of a public building for this purpose is impracticable or the use of a nonpublic building better serves the needs of the electorate, as determined by the authority charged with the responsibility for establishing polling places under sub. (2).

(2) In cities over 500,000 population, polling shall be at the places established by the board of election commissioners. In all other cities and in villages and towns, polling shall be at the places established by the governing body.

(3) (a) Polling places shall be established for each election at least 30 days before the election. Subject to par. (b), no polling place so established in a municipality may be closed to voters on election day unless the majority of the members-elect, as defined in s. 66.10015 (1) (bs), of the governing body of the municipality makes a finding of emergency, both the majority of the members-elect of the governing body of the municipality and the municipal clerk approve the closure, and the municipal clerk does all of the following:

1. Posts public notice of the closure on the municipality's website or, if the municipality does not maintain a website, posts notices in at least 3 different locations within the municipality reasonably calculated to notify the most residents.

2. Publishes a class 3 notice under ch. 985 notifying the public of the closure.

3. Publishes a class 2 or class 1 notice under ch. 985 notifying the public of the closure if time does not permit publication of a class 3 notice.

4. Designates a proper person who shall be stationed at or as near as possible to the closed location to notify all electors of the closure and of their new polling location.

5. In a municipality establishing one polling place only, establishes a new polling location approved by the majority of the members—elect of the governing body and the municipal clerk.

(b) Under no circumstance may a municipality close more than one-half of its polling places within 30 days before an election, except as provided in par. (a) 5.

(c) After an election and more than 30 days before the next election, the location of a polling place in a municipality may not be discontinued without the approval of the municipality's governing body after a public hearing at which the public has an opportunity to present testimony on the proposed discontinuation.

(d) Nothing in this subsection alters the authority of the election inspectors to adjourn to another location for voting on election day under s. 7.37 (1).

(4) (a) Each polling place shall be accessible to all individuals with disabilities. The commission shall ensure that the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place. This paragraph does not apply to any individual who is disqualified from voting under s. 6.03 (1) (a).

(b) In any jurisdiction that is subject to the requirement under 42 USC 1973aa–1a to provide voting materials in any language other than English, the commission shall ensure that the voting system used at each polling place in that jurisdiction is in compliance with 42 USC 1973aa–1a.

(d) No later than June 30 of each odd-numbered year, the commission shall submit a report on impediments to voting faced by elderly and handicapped individuals to the appropriate standing committees of the legislature under s. 13.172 (3). In preparing its report under this paragraph, the commission shall consult with appropriate advocacy groups representing the elderly and handicapped populations.

(5) (a) Except as authorized in par. (b), all electors within a ward shall vote at the same polling place.

(b) The municipal clerk or board of election commissioners of a municipality in which an elderly or handicapped elector resides may reassign the elector to a polling place within the municipality other than the polling place serving the elector's residence in order to permit the elector to utilize a polling place that is accessible to elderly or handicapped individuals.

(c) The electors of more than one ward in the same municipality may vote at a single polling place.

History: 1975 c. 275; 1977 c. 427; 1979 c. 89; 1983 a. 532; 1985 a. 304, 332; 1987 a. 391; 1989 a. 192; 1999 a. 182; 2003 a. 265; 2011 a. 75; 2015 a. 118 s. 266 (10); 2023 a. 124.

5.35 Polling place requirements. (1) NATIONAL FLAG. On election days, every polling place shall properly display the national flag during all hours the polls are open.

(2) **VOTING BOOTHS.** There shall be one voting booth for every 200 electors who voted at the last general election. The booths shall have a surface on which to write or work and be sufficiently enclosed to assure privacy for the elector and anyone lawfully assisting the elector while marking the elector's ballot.

(3) **BALLOT BOXES.** Where the voting procedure makes it necessary, there shall be a separate ballot box for each form of ballot at each polling place. There shall be a suitable lock and key for each, and an opening no larger than is sufficient to receive a single ballot or a single folded ballot if the box is used for deposit of paper ballots. If the electors of more than one ward use the same polling place, there shall be separate ballot boxes provided for the electors of each ward, unless combined ballot boxes are authorized in accordance with s. 5.15 (6) (b).

(4) **LAYOUT; ORGANIZATION.** All voting booths and machines shall be placed apart from other activities in the polling place, with their exteriors in full view of the election officials. Only the proper election officials, persons observing the proceedings under s. 7.41, persons assisting voters under s. 6.82 (2) and electors

receiving, preparing or depositing their ballots or casting their votes on the machines are permitted in the voting area. Except where assistance is authorized, only one elector at a time is permitted in a voting booth or machine.

(5) **ACTIVITIES RESTRICTED.** No polling place may be situated so as to interfere with or distract election officials from carrying out their duties. The municipal clerk and election inspectors shall prevent interference with and distraction of electors at polling places.

(6) **POSTING REQUIREMENTS.** (a) At each polling place in the state, the municipal clerk or board of election commissioners shall post the following materials, positioned so that they may be readily observed by electors entering the polling place or waiting in line to vote:

1. The relevant portions of the voting instructions in the type B notice for the election as specified in s. 10.02 (3) and, for each referendum on the ballot, the text of the type C notice specified in s. 10.01 (2) (c).

2. A copy of the election fraud laws provided in s. 12.13 (1) and (3) (intro), (d), (f), (g), (k), (L), (o), (q), (r), (u), and (x), together with the applicable penalties provided in s. 12.60 (1).

2m. General information prescribed by the commission on federal laws relating to election fraud and misrepresentation in federal elections.

3. Two sample ballots prepared under s. 5.66 (2).

4. The date of the election and the hours during which the polling place is open.

4a. Instructions prescribed by the commission for electors for whom proof of identification is required under s. 6.79 (2) or for whom proof of residence under s. 6.34 is required under s. 6.55 (2).

4b. General information prescribed by the commission concerning voting rights under applicable state and federal laws, including the method of redress for any alleged violations of those rights.

5. Any other voting information directed to be posted by the commission.

(b) At each polling place in the state where a consolidated ballot under s. 5.655 is used or an electronic voting system is utilized at a partisan primary election incorporating a ballot upon which electors may mark votes for candidates of more than one recognized political party, the municipal clerk or board of election commissioners shall prominently post a sign in the form prescribed by the commission warning electors in substance that on any ballot with votes cast for candidates of more than one recognized political party, no votes cast for any candidates for partisan office will be counted unless a preference for a party is made. If the elector designates a preference, only votes cast for candidates of that preference will be counted.

(c) At each polling place located in a municipality that is served by more than one polling place for an election, the municipal clerk or board of election commissioners shall prominently post a map of the geographic area served by the polling place for that election. The posting shall clearly show the boundaries of the ward or wards served by the polling place for that election.

History: 1975 c. 85, 199; 1977 c. 427; 1979 c. 260, 311, 355; 1981 c. 4, 20; 1983 a. 484; 1985 a. 304; 1999 a. 182; 2001 a. 16; 2003 a. 265; 2005 a. 451; 2011 a. 23, 32; 2015 a. 118 s. 266 (10).

5.36 Notice of voting by individuals with disabilities. Any individual with a disability may notify a municipal clerk that he or she intends to vote at a polling place on election day and may request that a specific type of accommodation be provided that will facilitate his or her voting.

History: 2003 a. 265.

5.37 Voting machine requirements. (1) Voting machines shall give every elector a reasonable opportunity to vote for any person for any office and on any proposition the elector is entitled to vote on, assure privacy to the elector so no one will know how

the elector is voting or has voted, preclude the electors from voting for persons or propositions upon which they are not entitled to vote and from voting more than once for the same office or on the same proposition. Voting machines shall be constructed to lock so they cannot be manipulated, tampered with, or show the number of votes registered for any candidate or proposition while voting is in progress. The machines shall permit voting a split ticket and shall record each vote cast.

(2) When 2 or more wards or aldermanic districts are joined to use a voting machine, under s. 5.15 (6) (b), the machine shall be constructed to allow the electors to vote for all nominated candidates and issues for their aldermanic district or ward, but for no other.

(3) For presidential electors one device shall be provided to vote for all of one party's electoral candidates at the same time. The device shall be opposite or adjacent to the names of the party's candidates for president and vice president.

(4) Voting machines may be used at primary elections when they comply with subs. (1) and (2) and the following provisions: All candidates' names entitled to appear on the ballots at the primary shall appear on the machine; the elector cannot vote for candidates of more than one party, whenever the restriction applies; the elector may secretly select the party for which he or she wishes to vote; the elector may vote for as many candidates for each office as he or she is lawfully entitled to vote for, but no more.

(5) Polling places may have more than one voting machine.

History: 1971 c. 304 s. 29 (1), (2); 1977 c. 107, 427; 1981 c. 314; 1983 a. 484; 1991 a. 316; 1999 a. 182; 2011 a. 23, 32.

5.40 Use of voting machines or systems. (1) Except as permitted in sub. (3) or as required in subs. (4) to (6), the governing body or board of election commissioners of every municipality with a population of 10,000 or more before July 1, 1995, or of 7,500 or more thereafter shall require the use of voting machines or electronic voting systems in every ward in the municipality at every election. Any other governing body or board of election commissioners may adopt and purchase voting machines or electronic voting systems for use in any ward in the municipality at any election.

(2) Only voting machines complying with s. 5.37 or electronic voting systems approved under s. 5.91 may be used in an election in this state.

(3) Notwithstanding sub. (1), any municipality may elect to utilize paper ballots and voting booths instead of voting machines or an electronic voting system:

(a) For any territory which is included in a portion of a congressional district, legislative district, county supervisory district, school district, technical college district, sewerage district or sanitary district contained within the municipality for so long as the number of electors residing in the territory does not exceed 100.

(b) Whenever the municipality is precluded under s. 7.23 (2) from clearing the recorders on a sufficient number of voting machines to serve the electors at the election.

(c) Whenever such action is authorized under s. 7.15 (6).

(d) Whenever the municipal clerk or board of election commissioners reassigns an elector to a polling place other than the one serving the elector's residence under s. 5.25 (5) (b).

(4) Notwithstanding sub. (1), a municipality which utilizes voting machines at a polling place shall not utilize a voting machine to receive the ballot of an elector who receives assistance under s. 6.82 (1) (a) or whose vote is challenged under ss. 6.92 to 6.94.

(5) A municipality which utilizes voting machines at a polling place shall not utilize the machines to receive the vote of an elector who declares to the chief inspector that, due to physical disability, the elector is unable to depress a button or lever on a machine.

(5m) Notwithstanding sub. (1), the governing body of a municipality which uses voting machines or an electronic voting system may petition the commission for permission to use paper

ballots and voting booths for a specific election, and the commission may grant such a request.

(6) A municipality which utilizes voting machines or an electronic voting system at a polling place may permit use of the machines or system by electors voting under s. 6.15 only as authorized under s. 6.15 (3).

(7) Whenever a municipality adopts and purchases voting machines or an electronic voting system, or adopts and purchases a different type of voting machine or electronic voting system from the type it was previously using, the municipal clerk or executive director of the municipal board of election commissioners shall promptly notify the county clerk or executive director of the county board of election commissioners and the administrator of the elections commission in writing.

History: 1971 c. 304 s. 29 (2); 1973 c. 112; 1977 c. 427; 1979 c. 235, 311, 355; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1993 a. 399; 2003 a. 265; 2007 a. 1; 2015 a. 118 ss. 62, 266 (10).

SUBCHAPTER II

BALLOT FORM

5.51 General provisions. (1) The type face used on all paper ballots shall be easy to read.

(2) The paper used for ballots shall be 35 pounds per ream for sheets 24 inches by 36 inches. If a different size sheet is used, the weight per ream shall be proportioned accordingly, but shall meet this standard. This subsection does not apply to ballots used with electronic voting systems.

(3) All paper ballots shall be of sufficient width and length to provide space for all matter required to be printed on them. Except on ballots used with electronic voting systems, all ballot columns shall be separated by lines at least one-eighth inch in width.

(4) No stickers may be placed on a ballot by election officials except under s. 7.37 (6). Any other stickers applied by them shall not be counted.

(5) Each official ballot shall be printed on paper of uniform color. Different colors shall be used to distinguish office and referendum ballots and different colors may be used to distinguish separate ballots for different offices. Sample ballots shall be printed on a different color paper than the official ballots, and need not have the endorsement and certificate.

(6) All candidates' names for the same office shall be placed, projected or composed on the ballot in the same size, style and color of type. The style and size of type shall conform substantially to the official ballot forms prescribed by the commission under s. 7.08 (1) (a).

(7) In partisan primary elections, all ballots shall be of uniform color and size, and the same type of paper shall be used for all ballots.

(8) Unless otherwise specifically provided, the form of all ballots shall conform to the ballot forms prescribed by the commission under s. 7.08 (1) (a).

History: 1979 c. 260, 311; 1981 c. 377; 1983 a. 484 s. 174; 1985 a. 304; 1987 a. 391; 1999 a. 182; 2005 a. 92; 2015 a. 118 s. 266 (10).

5.52 Multi-candidate elections. If more than one individual is to be elected to the same office from the same jurisdiction or district, the ballot shall provide at the top of the column or to the right of the row for that office: "Vote for not more than candidates."

History: 1985 a. 304.

5.53 Voting machine ballots. (1) Voting machine ballots shall be placed, projected or composed on a board or screen inside the machine, under s. 5.64 and may be arranged in either columns or rows. The type face shall be easy to read, and the type size may be no smaller than 8 point.

(2) Where separate ballots are provided for, the names or questions shall be placed in separate columns or rows upon the

machines so they are voted on separately, except as otherwise provided for referenda under s. 5.64 (2) (c).

History: 1979 c. 260, 311; 1981 c. 377 ss. 4, 5; 1999 a. 182.

5.54 Notice to electors. Every ballot, except a voting machine ballot, shall bear substantially the following information on the face: “NOTICE TO ELECTORS: This ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.”

History: 1977 c. 427; 1979 c. 260, 311; 1983 a. 484 s. 172 (3); 1985 a. 304; 1989 a. 192; 2001 a. 16, 104.

5.55 Information. On every ballot, except a voting machine ballot, shall be printed “Official Ballot” or “Official Ballot for” followed by the designation of the polling place for which the ballot has been prepared, the date of the election, and the official endorsement and blank certificates. The number of the ward or wards or aldermanic district, if any, and the name of the municipality may be omitted in printing and stamped or written on the ballots at any location which is clearly visible at the option of the county clerk. Printed information and initials shall appear on the back and outside of the ballot.

History: 1985 a. 304; 1997 a. 250; 1999 a. 182; 2001 a. 16; 2003 a. 265.

5.56 Multiple columns and rows. Whenever the number of candidates for any office requires the use of more than one row or column on a voting machine or whenever the official or agency having the responsibility to determine ballot positions determines that the number of candidates for an office requires the use of more than one column on a ballot, the official or agency having such responsibility shall require that the rows or columns be rotated in such a manner that all rows are positioned on top, or all columns are positioned to the left, in an equal number of wards or election districts. If the number of wards and election districts in which voting for an office is conducted is not equally divisible, the position of the rows or columns in the remaining wards or election districts shall be determined by the official or agency by the drawing of lots. The number of columns or rows shall be determined at the same time that the positions of the candidates’ names are determined for each primary and election.

History: 1981 c. 377 s. 5.

5.58 Spring primary ballots. (1a) GENERALLY. At spring primary elections the ballots under subs. (1b) to (2m), when necessary, shall be provided for each ward, except as authorized in s. 5.655. Only nonpartisan candidates nominated for office by nomination papers shall have their names placed on the official spring primary ballot under the proper office designation, but the ballots shall allow room for write-in candidates.

(1b) MUNICIPAL; COUNTY SUPERVISOR BALLOTS. (am) There shall be separate ballots for municipal and county primaries, except as authorized in s. 5.655.

(bm) For all cities the official spring primary ballot shall be arranged by the municipal clerk, using the same method as that used by the commission under s. 5.60 (1) (b).

(cm) Towns and villages holding a primary under s. 8.05 shall arrange the ballot in accordance with the form prescribed by the commission under s. 7.08 (1) (a), which shall be the same form as provided in s. 5.60 (5) and (6), insofar as possible.

(1c) MUNICIPAL JUDGE. There shall be a separate ballot for municipal judges if they are elected under s. 755.01 (4), except as authorized in s. 5.655. Arrangement of the names on the ballot shall be determined by the county clerk or the executive director of the county board of election commissioners of the county having the largest portion of the population in the jurisdiction served by the judge.

(1g) SCHOOL DISTRICT. (a) There shall be a separate ballot for school district officers when so required, except as authorized in s. 5.655.

(b) In 1st class cities, the names of the candidates for the seat of the member elected at-large to the board of school directors shall be placed on the official city primary ballot and, except as authorized in s. 5.655, there shall be a separate ballot giving the names of the candidates for any seat to be filled on the board of school directors from any election district. All names of candidates for the at-large seat shall be placed in one or more separate columns or rows on the ballot.

(c) The arrangement of candidates for school board seats shall be determined by the school district clerk or the executive director of the city board of election commissioners by the drawing of lots not later than the 2nd Tuesday in January, or the next day if the first Tuesday is a holiday. The method of determining arrangement shall be the same as provided in s. 5.60 (1) (b). Sufficient space shall be provided on the ballot for write-in candidates.

(1r) TOWN SANITARY DISTRICT COMMISSION. There shall be a separate ballot for members of the town sanitary district commission if commissioners are elected under s. 60.74 and the boundaries of the district are not coterminous with one or more towns, except as authorized in s. 5.655. Candidates for different seats shall be listed in separate columns or rows if more than one seat is contested in any election. Arrangement of the names on the ballot shall be determined by the town clerk of the town whose board of supervisors directs the election, in the same manner as provided in s. 5.60 (1) (b).

(2) STATE SUPERINTENDENT OF PUBLIC INSTRUCTION; JUDICIARY; COUNTY EXECUTIVE; COUNTY COMPTROLLER; AND COUNTY SUPERVISORS. There shall be one separate ballot for state superintendent, judicial officers, county executive under s. 59.17, and county supervisor, except as authorized in s. 5.655. In counties having a population of 750,000 or more, the ballot shall also include the office of comptroller and those offices under s. 8.11 (2) (b) and (2m). The arrangement of names of candidates for state superintendent, justice, court of appeals judge, and circuit court judge shall be determined by the commission in the manner specified in s. 5.60 (1) (b). Arrangement of the names of candidates for county executive, county comptroller, and county supervisor shall be determined by the county clerk or by the executive director of the county board of election commissioners in the manner specified in s. 5.60 (1) (b).

(2m) METROPOLITAN SEWERAGE COMMISSION. Except as authorized in s. 5.655, there shall be a separate ballot for members of the metropolitan sewerage commission if commissioners are elected under s. 200.09 (11) (am), with candidates for different seats listed in separate columns or rows if more than one seat is contested at any election. Arrangement of the names on the ballot shall be determined by the elections commission.

(3) NAMES ON SPRING BALLOT. Only 2 candidates for state superintendent, for any judicial office, for any elected seat on a metropolitan sewerage commission or town sanitary district commission, in counties having a population of 750,000 or more, only 2 candidates for the office of comptroller and only 2 candidates for member of the board of supervisors within each district, in counties having a population of less than 750,000 only 2 candidates for each member of the county board of supervisors from each district or numbered seat or only 4 candidates for each 2 members of the county board of supervisors from each district whenever 2 supervisors are elected to unnumbered seats from the same district, in 1st class cities only 2 candidates for any at-large seat and only 2 candidates from any election district to be elected to the board of school directors, in school districts electing school board members to numbered seats, or pursuant to an apportionment plan or district representation plan, only 2 school board candidates for each numbered seat or within each district, and twice as many candidates as are to be elected members of other school boards or other elective officers receiving the highest number of votes at the primary shall be nominees for the office at the spring election. Only their names shall appear on the official spring ballot.

History: 1971 c. 304 ss. 6 to 8, 29 (2); 1973 c. 134, 243; 1973 c. 334 s. 57 (2); 1973 c. 340; 1975 c. 93; 1977 c. 187, 272, 445, 449; 1979 c. 32, 221, 260; 1981 c. 20, 377;

1983 a. 484; 1983 a. 532 s. 36; 1985 a. 29 s. 3202 (56); 1985 a. 89, 225; 1985 a. 304 ss. 27, 27m, 155; 1989 a. 192, 290; 1991 a. 5; 1993 a. 266; 1995 a. 16 s. 2; 1995 a. 27 s. 9145 (1); 1995 a. 201, 219; 1997 a. 35; 1999 a. 150 s. 672; 1999 a. 182; 2003 a. 24 ss. 3, 4; 2005 a. 149; 2011 a. 45, 62; 2015 a. 118 ss. 63, 64, 266 (10); 2017 a. 207.

5.60 Spring election ballots. At spring elections all of the following ballots, when necessary, shall be provided for each ward, except as authorized in s. 5.655:

(1) STATE SUPERINTENDENT; JUDICIARY; COUNTY EXECUTIVE; COUNTY COMPTROLLER; AND COUNTY SUPERVISORS. (ag) There shall be one separate ballot for state superintendent, judicial officers, county executive, county comptroller in counties having a population of 750,000 or more, and county supervisor, except as authorized in s. 5.655. For county supervisor, the ballot shall be prepared in accordance with ss. 5.58 (2) and 59.10 (3). Arrangement of the names of candidates for county executive, county comptroller, county supervisor, and municipal judge, if the judge is elected under s. 755.01 (4), shall be determined by the county clerk or the executive director of the county board of election commissioners determining ballot arrangement under s. 5.58 (1c), in the manner prescribed in par. (b).

(ar) The names of candidates for the same office shall be placed in the same column. No party designation may appear on the official ballot. Unless no candidate is certified to appear on the ballot for a state office, a space shall be provided on the ballot for electors to write in the name of a person for each office, regardless of whether there is a primary for that office.

(b) The elections commission shall certify the candidates' names and designate the official ballot arrangement for candidates for state superintendent, justice, court of appeals judge, and for circuit judge and for metropolitan sewerage commission commissioners elected under s. 200.09 (11) (am). The arrangement of names of all candidates on the ballot whose nomination papers are filed with the elections commission shall be determined by the elections commission by the drawing of lots not later than the 2nd Tuesday in January, or the next day if the first Tuesday is a holiday. Whenever a primary is held for an office, a 2nd drawing of all candidates for that office shall be held by or under the supervision of the elections commission not later than the 3rd day following the completion of the primary canvass to determine the arrangement of candidates on the election ballot.

(c) When 2 or more judges of the same court are to be elected, the official ballot shall contain the names of all candidates, shall state the number of judges to be elected and the number of candidates for whom each elector may vote. Each candidacy shall show the branch being filled.

(2) MUNICIPAL JUDGE. If the election is under s. 755.01 (4), there shall be a separate ballot listing the names of all of the candidates, except as authorized in s. 5.655.

(3) CITY. (ag) Except as authorized in s. 5.655, there shall be a separate ballot giving the names of all candidates for city offices, printed in the same form as prescribed by the commission under s. 7.08 (1) (a). City election ballots may vary in form to conform to the law under which an election is held.

(am) No party designation shall appear on the official ballot for city offices.

(b) The city clerk or executive director of the city election commission shall arrange the official city ballot under s. 5.62 (4).

(4) SCHOOL DISTRICT. (a) There shall be a separate ballot for school district officers when so required, except as authorized in s. 5.655.

(b) In 1st class cities, the names of the candidates for the seat of the member elected at-large to the board of school directors shall be placed on the official city ballot and there shall be a separate ballot giving the names of the candidates for any seat to be filled on the board of school directors from any election district, except as authorized in s. 5.655. The names of candidates for the at-large seat shall be placed in the same column or row on the ballot.

(c) The arrangement of candidates for school board seats shall be determined by the school district clerk or the executive director of the city board of election commissioners by the drawing of lots not later than the 2nd Tuesday in January, or the next day if the first Tuesday is a holiday, if there is no primary, or not later than the 3rd day following the completion of the primary canvass if a primary is held. The method of determining arrangement shall be the same as provided in sub. (1) (b). Sufficient space shall be provided on the ballot for write-in candidates.

(4m) METROPOLITAN SEWERAGE COMMISSION. A separate ballot shall list the names of all candidates for metropolitan sewerage commission seats, if commissioners are elected under s. 200.09 (11) (am), except as authorized in s. 5.655. The names for the different seats shall be placed in separate columns or rows if more than one seat is contested at any election.

(5) VILLAGE. (ag) There shall be a separate ballot giving the names of all candidates for village offices, except as authorized in s. 5.655.

(ar) The offices to be filled shall be arranged on the official ballot in the order they are named in the statutes creating them. The names of the candidates shall be arranged by using the same method as that used by the commission under sub. (1) (b). Sufficient space shall be left under each office for write-in candidates.

(b) Only persons nominated under s. 8.05 shall be placed on the official ballots. If no nominations are made, the spaces for this office shall be left blank.

(6) TOWN. (a) Except as authorized in s. 5.655, there shall be a separate ballot giving the names of all candidates for elective town offices in the form prescribed by the commission under s. 7.08 (1) (a). There shall be 2 ballot forms. One ballot form shall be used for the election of supervisors to numbered seats and one ballot form shall be used for the election of supervisors to unnumbered seats. On the ballot used for the election of supervisors to unnumbered seats, all supervisor candidates shall be listed together and the voting instructions shall state "Vote for not more than... [insert number of supervisors to be elected] candidates". All towns shall elect their supervisors to unnumbered seats unless the annual town meeting adopts a plan to elect supervisors to numbered seats. The names of candidates for town office shall be arranged by using the same method as that used by the commission under sub. (1) (b). A space shall be provided under each office on the ballot for a write-in candidate.

(b) Only the names of individuals nominated under s. 8.05 may be placed on the official ballot. If no nominations for an office are made, the space for that office shall be left blank.

(6m) TOWN SANITARY DISTRICT COMMISSION. Except as authorized in s. 5.655, a separate ballot shall list the names of all candidates for town sanitary district commission seats, if commissioners are elected under s. 60.74 and the boundaries of the district are not coterminous with the boundaries of one or more towns. The names for different seats shall be placed in separate columns or rows if more than one seat is contested at any election.

(7) REFERENDUM BALLOTS. Except as authorized in s. 5.655, there shall be a separate ballot setting forth all propositions requiring a vote in the form and manner provided by s. 5.64.

(8) BALLOTS FOR PRESIDENTIAL VOTE. (am) Except as authorized in s. 5.655, there shall be a separate ballot for each recognized political party filing a certification under s. 8.12 (1), listing the names of all potential candidates of that party determined under s. 8.12 and affording, in addition, an opportunity to the voter to nominate another potential candidate by write-in vote or to vote for an uninstructed delegation to the party convention. The order of presidential candidates on the ballot shall be determined by lot by or under the supervision of the commission. Each voter shall be given the ballots of all the parties participating in the presidential preference vote, but may vote on one ballot only.

(bm) Except as authorized in s. 5.655, a separate ballot shall be provided for use in each voting district.

(c) The official ballots for the presidential preference vote shall be securely fastened together at the bottom. The party receiving the greatest number of votes for governor at the preceding election shall have its ticket placed on top and the remaining party ballots shall follow in the same manner. A facsimile ballot notice shall be published as provided in s. 10.02.

History: 1971 c. 304 ss. 9 to 11, 29 (2); 1971 c. 336; 1973 c. 134; 1973 c. 334 s. 57; 1975 c. 93; 1977 c. 187, 427, 445, 449; 1979 c. 221, 260, 355; 1981 c. 377; 1983 a. 484; 1983 a. 532 s. 36; 1985 a. 29 s. 3202 (56); 1985 a. 89, 225; 1985 a. 304 ss. 28, 155; 1987 a. 391; 1989 a. 192, 290; 1993 a. 266; 1995 a. 16 s. 2; 1995 a. 201; 1999 a. 150 s. 672; 1999 a. 182; 2003 a. 24; 2005 a. 149; 2011 a. 45, 62; 2015 a. 118 ss. 65, 266 (10).

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 United States v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981).

5.62 Partisan primary ballots. (1) (a) At the partisan primary, the following ballot shall be provided for the nomination of candidates of recognized political parties for national, state and county offices and independent candidates for state office in each ward, in the same form as prescribed by the commission under s. 7.08 (1) (a), except as authorized in s. 5.655. The ballots shall be made up of the several party tickets with each party entitled to participate in the primary under par. (b) or sub. (2) having its own ballot, except as authorized in s. 5.655. The ballots shall be secured together at the bottom. The party ballot of the party receiving the most votes for president or governor at the last general election shall be on top with the other parties arranged in descending order based on their vote for president or governor at the last general election. The ballots of parties qualifying under sub. (2) shall be placed after the parties qualifying under par. (b), in the same order in which the parties filed petitions with the commission. Any ballot required under par. (b) 2. shall be placed next in order. At polling places where voting machines are used, each party shall be represented in one or more separate columns or rows on the ballot. At polling places where an electronic voting system is used other than an electronic voting machine, each party may be represented in separate columns or rows on the ballot.

(b) 1. Except as provided in subd. 2. and s. 5.64 (1) (e) 2., every recognized political party listed on the official ballot at the last gubernatorial election whose candidate for any statewide office received at least 1 percent of the total votes cast for that office and, if the last general election was also a presidential election, every recognized political party listed on the ballot at that election whose candidate for president received at least 1 percent of the total vote cast for that office shall have a separate primary ballot or one or more separate columns or rows on the primary ballot as prescribed in par. (a) and a separate column on the general election ballot in every ward and election district. An organization which was listed as “independent” at the last general election and whose candidate meets the same qualification shall receive the same ballot status upon petition of the chairperson and secretary of the organization to the commission requesting such status and specifying their party name, which may not duplicate the name of an existing party. A petition under this subdivision may be filed no later than 5 p.m. on April 1 in the year of each general election.

2. Subdivision 1. applies to a party within any assembly district or county at any partisan primary election only if at least one candidate of the party for any national, state or county office qualifies to have his or her name appear on the ballot under the name of that party within that assembly district or county. The county clerk or county board of election commissioners shall provide a combined separate ballot or one or more separate columns or rows on the ballot that will permit an elector to cast a vote for a write-in candidate for the nomination of any such party for each national, state and county office whenever that party qualifies to be represented on a separate primary ballot or in one or more separate columns or rows under subd. 1. but does not qualify under this subdivision. The ballot shall include the name of each party qualifying for a separate ballot or one or more separate columns or rows on

the ballot under each office, with the names of the candidates for each such party appearing in the same order in which the ballots of the parties would appear under par. (a).

(2) (a) Except as provided in par. (b) and s. 5.64 (1) (e) 2., any political organization may be represented on a separate primary ballot or in one or more separate columns or rows on the primary ballot as prescribed in sub. (1) (a) and in a separate column on the general election ballot in every ward and election district. To qualify for a separate ballot under this paragraph, the political organization shall, not later than 5 p.m. on April 1 in the year of the partisan primary, file with the commission a petition requesting separate ballot status. The petition shall be signed by at least 10,000 electors, including at least 1,000 electors residing in each of at least 3 separate congressional districts. The petition shall conform to the requirements of s. 8.40. No signature obtained before January 1 in the year of filing is valid. When the candidates of a political organization filing a valid petition fulfill the requirements prescribed by law, they shall appear on a separate ballot or one or more separate columns or rows on the ballot for the period ending with the following general election.

(b) Paragraph (a) applies to a party within any assembly district or county at any partisan primary election only if at least one candidate of the party for any national, state or county office qualifies to have his or her name appear on the ballot under the name of that party within that assembly district or county. The county clerk or county board of election commissioners shall provide a combined separate ballot or one or more separate columns or rows on the ballot that will permit an elector to cast a vote for a write-in candidate for the nomination of any such party for each national, state and county office whenever that party qualifies to be represented on a separate primary ballot or in one or more separate columns or rows under par. (a) but does not qualify under this paragraph. The ballot shall include the name of each party qualifying for a separate ballot or one or more separate columns or rows on the ballot under each office, with the names of the candidates for each such party appearing in the same order in which the ballots of the parties would appear under sub. (1) (a).

(3) The commission shall designate the official primary ballot arrangement for statewide offices and district attorney within each prosecutorial district by using the same procedure as provided in s. 5.60 (1) (b). On each ballot and on each separate column or row on the ballot, the candidates for office shall be listed together with the offices which they seek in the following order whenever these offices appear on the partisan primary ballot: governor, lieutenant governor, attorney general, secretary of state, state treasurer, U.S. senator, U.S. representative in congress, state senator, representative to the assembly, district attorney and the county offices.

(4) (ag) The county clerk or county board of election commissioners shall designate the official primary ballot arrangement for all candidates filing nomination papers in that office.

(ar) Within a county the county clerk shall arrange the names of all candidates filing nomination papers with the clerk's office using the same method as that used by the commission under s. 5.60 (1) (b).

(b) The county board of election commissioners in counties having a population of more than 750,000 shall prepare the official primary ballot. The commissioners shall arrange the names of all candidates for each office whose nomination papers are filed at the county level, using the same method as that used by the elections commission under s. 5.60 (1) (b).

History: 1971 c. 304 ss. 12, 29 (2); 1971 c. 336; 1973 c. 334 s. 57; 1975 c. 93; 1977 c. 107, 427; 1979 c. 260, 311, 328; 1981 c. 377; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 31, 192; 1991 a. 316; 1993 a. 184; 1999 a. 182; 2005 a. 149; 2007 a. 1; 2011 a. 32, 75; 2013 a. 166 s. 77; 2013 a. 373; 2015 a. 118 ss. 66, 266 (10).

The filing of a proper petition by the requisite number of electors in a senate, assembly, or congressional district will qualify the political organization referred to in the petition as a party entitled to a separate ballot within the specific district only for all the state, congressional, legislative, and county offices for which an elector of that district may vote. The petition may be circulated commencing after any Novem-

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ber general election and ending on the June 1 immediately prior to the next succeeding September primary. 61 Atty. Gen. 41.

5.64 General election ballots. At general elections all of the following ballots, when necessary, shall be provided for each ward:

(1) **OFFICIAL BALLOT.** (ag) Except as authorized in s. 5.655, there shall be a separate ballot giving the names of all candidates for president and vice president and for statewide, congressional, legislative, and county offices in the same form as prescribed by the commission under s. 7.08 (1) (a).

(ar) 1. The ballot shall permit an elector to do any of the following:

b. Vote for individual candidates for each office.

c. Vote for a person whose name does not appear on the ballot for any office.

1m. When voting for president and vice president, the ballot shall permit an elector to vote only for the candidates on one ticket jointly or to write in the names of persons in both spaces.

2. When voting for governor and lieutenant governor, the ballot shall permit an elector to vote only for the candidates on one ticket jointly or write in the names of persons in both spaces.

(b) The names of the candidates for the offices of president and vice president that are certified under s. 8.16 (7) or that are contained in nomination papers filed under s. 8.20 shall appear on the ballot in the form prescribed in s. 7.08 (2) (a). The names of the candidates on the regular party tickets nominated at the primary or replacements appointed under s. 8.35 (2) shall appear in a separate column under the party designation. The columns shall be arranged from left to right according to rank, based on the number of votes received by each party's candidate for president or governor at the last general election beginning with the party that received the most votes. To the right of the columns for parties qualifying under s. 5.62 (1) (b) shall be placed the columns for parties qualifying under s. 5.62 (2) in the same order in which the parties filed petitions with the commission. Any column required under par. (e) 2. shall be placed next in order. To the right of the party columns shall be a column for the names of independent candidates for each office, or more than one column if the first column does not provide sufficient space for the names of all such candidates.

(d) The offices shall be arranged beginning with president and vice president or governor and lieutenant governor, whenever these offices are filled, and then the remaining offices in the order designated under s. 5.62 (3).

(e) 1. Except as provided in subd. 2., each candidate's name shall be placed in the column of the party by which nominated or if independent, in a column designated independent and all candidates for the same office shall appear within the same rows on the ballot. If a separate column is provided to write in the names of any party candidates under subd. 2., the column shall appear before the column designated independent with the spaces provided to write in the names of the candidates for each such party appearing in the same order in which the columns of their parties would appear under par. (b). Along with the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers. Independent candidates for the same county office shall be listed in the same manner in an order drawn by lot by or under supervision of the county clerk or board of election commissioners.

2. There shall be a separate column for the candidates of each party qualifying for that column under s. 5.62 (1) (b) or (2), except that if, within any assembly district or county, there are no candidates for any national, state or county office representing such a party who qualify to have their names appear on the ballot under the name of that party within that assembly district, the county

clerk or board of election commissioners shall provide a combined separate column that will permit an elector to cast a vote for a write-in candidate of any such party for each national, state and county office whenever that party qualifies to be represented in a separate column but does not qualify under this subdivision. The ballot shall include the name of each party qualifying for a separate column under each office, with the names of the candidates for each such party appearing in the same order in which the columns of the parties would appear under par. (b).

(eg) In the case of balloting for the offices of president and vice president, the names of the candidates shall be placed in the column of the party that nominated them or if independent, in a column designated independent. In each column there shall be one choice for the elector to cast a ballot jointly for both offices.

(em) The names of the candidates for the offices of president and vice president certified under s. 8.16 (7) or filed under s. 8.20 shall appear on the ballot in the form prescribed in s. 7.08 (2) (a). The names of the presidential electors for the candidates supplied under ss. 8.18 (2) and 8.20 (2) (d) are not listed on the ballot but a vote for the candidates for president and vice president is a vote for them through their named presidential electors.

(es) The party candidates shall be arranged consecutively from top to bottom based on the number of votes received by their party's candidate for governor at the last election beginning with the party that received the most votes. The independent president-vice president candidates shall be listed together in an order drawn by lot by or under supervision of the commission, following under the party candidates. Along with the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers. Following under the independent candidates, a space shall be left for writing in the names of a candidate for president and vice president.

(f) In the case of balloting for the office of governor and lieutenant governor, the names of the candidates shall be placed in the party column by which nominated or if independent, in a column designated independent. In each column there shall be one choice for the elector to cast a ballot jointly for both offices.

(g) Following under the independent candidates for each office, a space shall be provided for the elector to write in the name of a candidate of his or her choice for that office.

(2) **REFERENDUM BALLOT.** (am) There shall be a separate ballot when any proposed constitutional amendment or any other measure or question is submitted to a vote of the people, except as authorized in s. 5.655. The ballot shall give a concise statement of each question in accordance with the act or resolution directing submission in the same form as prescribed by the commission under s. 7.08 (1) (a). The question may not be worded in such a manner as to require a negative vote to approve a proposition or an affirmative vote to disapprove a proposition. Unless otherwise expressly provided, this ballot form shall be used at all elections when questions are submitted to a vote of the people.

(c) The official referendum ballot prescribed under this subsection shall be utilized at every election, except that the format shall be altered to the extent provided or required by other laws establishing or authorizing referenda to be conducted. Except as authorized in s. 5.655, all referenda shall appear on a separate ballot, but more than one referendum question may appear on the same referendum ballot whenever the questions are numbered and all electors voting the ballot are entitled to vote upon all questions appearing thereon. When more than one state referendum is placed on the same ballot, the commission shall number the questions in chronological sequence. If the legislature submits questions on different dates, the commission shall number the questions sequentially based on the date on which the questions are submitted by the legislature. Except as authorized in s. 5.655, state and county referenda shall appear on a separate ballot from

municipal or special district referenda. The form of all referendum ballots shall be substantially the same as that prescribed by the commission under s. 7.08 (1) (a).

History: 1971 c. 304 s. 29 (2); 1977 c. 26, 427; 1979 c. 260; 1981 c. 79, 175, 377, 391; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 31, 192; 1991 a. 316; 1999 a. 182; 2005 a. 149; 2011 a. 23, 115; 2015 a. 118 s. 266 (10).

5.65 Special referendum ballots. Unless otherwise provided, ballots for special referenda shall conform to the format prescribed under s. 5.64 (2), insofar as applicable.

History: 1983 a. 484; 1999 a. 182.

5.655 Consolidated ballots. (1) Whenever a separate ballot is required to be used, a municipality may use a single ballot to facilitate the use of voting machines or an electronic voting system or, if the municipality employs paper ballots, may use a consolidated paper ballot that is authorized under sub. (2). If a municipality uses a single ballot in lieu of separate ballots, the ballot shall include a separate column or row for any office, referendum or party for which a separate ballot is required by law and the ballot shall be distributed only to electors who are eligible to vote for all of the offices and referenda appearing on the ballot.

(2) Whenever a municipality employing paper ballots is required to utilize separate ballots for certain offices, referenda or parties at an election, the municipality may, with the approval of the county clerk or board of election commissioners of each county in which there is located any portion of the municipality where one or more electors reside, substitute a single consolidated paper ballot or a ballot that is designed to be utilized with an electronic voting system, if the ballot contains all of the applicable information required to be provided for paper ballots at that election.

(3) The commission shall prescribe notices and instructions to be given to electors who use a ballot that is authorized under sub. (2) in lieu of any notices and instructions that are applicable only to municipalities employing separate paper ballots.

History: 1999 a. 182; 2015 a. 118 s. 266 (10).

5.66 Number of ballots. (1) For local elections, where necessary, municipal clerks shall have sufficient ballots printed or otherwise prepared whenever a voting system does not utilize printed ballots to assure a ballot for all electors or voting machines. For all other elections the municipal clerks shall certify to their county clerk, on the first day of the 2nd month preceding the month in which the primary is held, the approximate number of electors in the municipality. The county clerk shall total these estimates and order a sufficient supply to assure ballots for all electors and voting machines.

(2) The county clerk or board of election commissioners shall print a sufficient number of sample ballots. The municipal clerk or board of election commissioners shall print sample ballots whenever the municipality prepares ballots under s. 7.15 (2) (b) or (c). Sample ballots shall be printed on nonwhite colored paper and shall be overprinted "SAMPLE". Voting machine sample ballots shall be a reduced size diagram of the face of the board or screen inside the voting machine with all candidates, issues and voting instructions as they will appear on the official ballot. Sample ballots to be used with an electronic voting system in which ballots that are distributed to electors are used shall be an actual size copy of the ballot. The clerk or board of election commissioners printing the ballots shall distribute the samples approximately as follows: 45 percent shall be kept in the clerk's or board's office and distributed to electors requesting them; 45 percent shall be sent to the municipalities, or, if the municipality prints ballots, 45 percent shall be sent to the county for distribution to the electors; and 10 percent shall be reserved to be sent to the polling places by municipalities in proportion to the number certified in sub. (1) and made available to electors at the polls on election day.

History: 1979 c. 260, 311, 355; 1983 a. 484; 1987 a. 391; 2001 a. 16.

5.68 Cost of elections. (1) The cost of acquisition of ballot boxes and voting booths, voting machines or electronic voting systems and regular maintenance thereof shall be borne by the municipalities in which the boxes, booths, machines or systems are used.

(2) Except as otherwise expressly provided, all costs for ballots, supplies, notices and any other materials necessary in preparing or conducting any election shall be paid for by the county or municipality whose clerk or board of election commissioners is responsible for providing them. If a ballot is prepared for a school, technical college, sewerage or sanitary district, the district shall pay for the cost of the ballot. If no other level of government is involved in a school, technical college, sewerage or sanitary district election, the district shall pay for all costs of the ballots, supplies, notices and other materials. If ballots, supplies, notices or other materials are used for elections within more than one unit of local government, the costs shall be proportionately divided between the units of local government involved in the election. In a 1st class city, all costs otherwise attributable to a school district shall be paid by the city.

(3) If voting machines are used or if an electronic voting system is used in which all candidates and referenda appear on the same ballot, the ballots for all national, state and county offices and for county and state referenda shall be prepared and paid for by the county wherein they are used. If the voting machine or electronic voting system ballot includes a municipal or school, technical college, sewerage or sanitary district ballot, the cost of that portion of the ballot shall be reimbursed to the county or paid for by the municipality or district, except as provided in a 1st class city school district under sub. (2).

(4) The cost of compensation of election officials and trainees shall be borne in the manner provided in s. 7.03.

(5) If a charge is made for the use of a polling place, the charge shall be paid by the municipality establishing the polling place under s. 5.25 (2) unless the polling place is used to conduct a special election that is called by a unit of government other than the state or the municipality establishing the polling place and the special election is not held concurrently with an election specified in s. 5.02 (5), (12s), (21), or (22). In such case the charge shall be paid by the unit of government that calls the special election.

(6) The clerk of each county or municipality shall submit an invoice to the clerk of each municipality or district which is responsible for payment of election costs under this section. The municipality or district shall make payment to the county or municipal treasurer.

History: 1979 c. 260, 311, 355; 1985 a. 304; 1993 a. 399; 1999 a. 182; 2001 a. 16; 2005 a. 333, 451; 2011 a. 32; 2013 a. 165; 2015 a. 118.

5.72 Correcting ballot errors. (1) As soon as possible after ballots are delivered to the county clerk or to the municipal clerk if the municipality is preparing ballots under s. 7.15 (2), but not later than 3 weeks before any election relating to a state or national office or statewide referendum, the county or municipal clerk preparing the ballots shall submit one copy of each ballot to the commission for review of possible errors. If the contractor preparing the ballots supplies proofs in advance of ballot preparation, the clerk shall submit one copy of the proofs in lieu of actual ballots. If a voting machine ballot or other ballot combining local candidates or referenda with state or national candidates or referenda is used, the entire ballot shall be submitted, but if ballots intended for distribution to electors are used, only those ballots relating to state or national offices and statewide referenda need be submitted. This subsection does not require delay of ballot distribution or mailing of absentee ballots.

(2) The commission shall review ballots and proof copies submitted under sub. (1) and shall notify the county and municipal clerk of any error as soon as possible but in no event later than 7 days after submission. The clerk is not required to correct a ballot

error upon receipt of notice of the error, unless ordered to do so under sub. (3) or s. 5.06 (6).

(3) Whenever an affidavit is filed by the commission or any elector alleging an error or omission in the preparation of a ballot, the circuit court for the county where the ballot is proposed to be used or its presiding judge, by order, may summarily require a county or municipal clerk to correct the error, or show cause why it should not be corrected and, by order, after the hearing, have the correction made.

History: 1979 c. 260; 1979 c. 311 s. 19; 1979 c. 355 ss. 9, 10; Stats. 1979 s. 5.72; 1981 c. 377; 1983 a. 484; 2015 a. 118 s. 266 (10).

SUBCHAPTER III

ELECTRONIC VOTING SYSTEMS

5.76 Adoption, experimentation or discontinuance of systems. The governing body or board of election commissioners of any municipality may by ordinance or resolution adopt, experiment with, or discontinue any electronic voting system authorized by this subchapter and approved under s. 5.91 for use in this state, and may purchase or lease materials or equipment for such system to be used in all or some of the wards within its jurisdiction, either exclusively in combination with mechanical voting machines, or in combination with paper ballots where such ballots are authorized to be used.

History: 1979 c. 311; 1985 a. 304.

Cross-reference: See also ch. EL 7, Wis. adm. code.

5.77 Applicable procedures. (1) So far as applicable, the procedure provided for voting paper ballots applies when an electronic voting system employing the use of ballots distributed to electors is used.

(2) So far as applicable, the procedure provided for voting with mechanical voting machines applies when an electronic voting system employing the use of electronic voting machines is used.

History: 1979 c. 311.

Cross-reference: See also ch. EL 7, Wis. adm. code.

5.78 Voting booths. At polling places where an electronic voting system employing the use of ballots distributed to electors is used, the municipality shall supply a sufficient number of voting booths for the use of electors as provided in s. 5.35 (2).

History: 1979 c. 311.

5.79 Instruction of electors. At polling places where an electronic voting system employing the use of ballots and voting devices is used, the election officials shall offer each elector instruction in the operation of the voting device and ballot before the elector enters the voting booth. No instructions may be given after the elector has entered the voting booth, except as authorized under s. 6.82 (2). All instructions shall be given by election officials in such a manner that they may be observed by other persons in the polling place.

History: 1979 c. 311; 2001 a. 16.

5.80 Demonstrator electronic voting system. When an electronic voting system is used in a forthcoming election, the municipal clerk may provide, for the purpose of instructing electors in the election, one or more demonstrator electronic voting systems using the names of fictitious candidates or fictitious questions for placement in any public building within the municipality in which the election occurs. If such placement of a demonstrator takes place it shall be made available at least 30 days before the election.

History: 1979 c. 311.

5.81 Ballot information; arrangement; absentee ballots. (1) Whenever the statutes provide for the use of separate ballots or columns or rows for offices, parties or referenda, and an

electronic voting system in which ballots are distributed to electors is used at a polling place, a single ballot may be used for all offices, referenda and parties. The ballot information, whether placed on the ballot or on the voting device, shall, as far as practicable, be grouped and ordered in the same manner as provided for other ballots under this chapter, except that the information on the ballot need not be in separate columns or rows.

(3) If a municipality utilizes an electronic voting system in which ballots distributed to electors are employed, absentee ballots may consist of ballots utilized with the system or paper ballots and envelopes voted in person in the office of the municipal clerk or voted by mail.

(4) In partisan primary elections, if a ballot contains the names of candidates of more than one party, it shall provide a space for electors to designate a party preference. Failure to designate a preference does not invalidate any votes cast by an elector, except as provided in s. 7.50 (1) (d).

History: 1979 c. 311; 1985 a. 304; 1999 a. 182; 2001 a. 16; 2011 a. 32.

5.82 Write-in ballots. If the ballot employed by a municipality does not provide a space for write-in votes, the municipality shall provide a separate write-in ballot, which may be in the form of a paper ballot, to permit electors to write in the names of persons whose names are not on the ballot whenever write-in votes are authorized.

History: 1979 c. 311; 1987 a. 391; 2001 a. 16.

5.83 Preparation for use of voting devices; comparison of ballots. Where voting devices are used at a polling place, the municipal clerk shall cause the voting devices to be put in order, set, adjusted and made ready for voting when delivered to the polling place. Before the opening of the polls the inspectors shall compare the ballots used in the voting devices with the sample ballots furnished and see that the names, numbers and letters thereon agree and shall certify thereto on forms provided by the commission.

History: 1979 c. 311; 2015 a. 118 s. 266 (10).

5.84 Testing of equipment; requirements for programs and ballots. (1) Where any municipality employs an electronic voting system which utilizes automatic tabulating equipment, either at the polling place or at a central counting location, the municipal clerk shall, on any day not more than 10 days prior to the election day on which the equipment is to be utilized, have the equipment tested to ascertain that it will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given by the clerk at least 48 hours prior to the test by publication of a class I notice under ch. 985 in one or more newspapers published within the municipality if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to the public. The test shall be conducted by processing a preaudited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each referendum. The test shall include for each office one or more ballots which have votes in excess of the number allowed by law and, for a partisan primary election, one or more ballots which have votes cast for candidates of more than one recognized political party, in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the municipal clerk shall ascertain the cause and correct the error. The clerk shall make an errorless count before the automatic tabulating equipment is approved by the clerk for use in the election.

(2) Before beginning the ballot count at each polling place or at the central counting location, the election officials shall witness a test of the automatic tabulating equipment by engaging the printing mechanism and securing a printed result showing a zero count for every candidate and referendum. After the completion of the count, the ballots and programs used shall be sealed and retained under the custody of the municipal clerk in a secure location.

History: 1979 c. 311; 2001 a. 16; 2005 a. 92.

5.85 Receiving, counting, tallying and return of ballots. (1) At any polling place at which an electronic voting system is utilized, the following procedures for receiving, counting, tallying and return of the ballots shall be used. Whenever paper ballots are utilized at a polling place in combination with ballots employed in an electronic voting system, the paper ballots shall be deposited in a separate ballot box or boxes, according to the types of ballots used. For the purpose of transporting the ballots or the record of the votes cast, the municipal clerk shall provide a secure container for each polling place. At each polling place, the applicable portions of the procedure prescribed for initiating the canvass under s. 7.51 (1) and (2) shall be performed, except that no count of the ballots, except write-in votes and paper ballots used for absentee voting and other purposes authorized by law, may be performed at a polling place if a central counting location is designated for the counting of ballots at that polling place by the municipality.

(2) (a) The election officials shall examine the ballots or record of votes cast for write-in votes and shall count and tabulate the write-in votes. The election officials shall count write-in votes as provided in s. 7.50 (2) (d). When an electronic voting system is used in which ballots are distributed to electors, before separating the remaining ballots from their respective covering envelopes, the election officials shall examine the ballots for write-in votes. When an elector has cast a write-in vote, the election officials shall compare the write-in vote with the votes on the ballot to determine whether the write-in vote results in an overvote for any office. In case of an overvote for any office, the election officials shall follow the procedure in par. (b).

(b) 1. In case of an overvote for any office, the election officials may either use the override function of the electronic voting system in order to eliminate the votes for the overvoted office, which shall be noted on the inspector's statement, or make a true duplicate ballot of all votes on the ballot except for the office that is overvoted in the manner described in this subdivision. If the election officials make a true duplicate ballot, they shall use an official ballot of that kind used by the elector who voted the original ballot, and one of the marking devices, so as to transfer all votes of the elector except for the office overvoted to an official ballot of that kind used in the ward at that election. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, whenever election officials of both of the 2 major political parties are present, the election officials acting under this subdivision shall consist in each case of at least one election official of each of the parties.

2. On any original ballot upon which there is an overvote and for which a duplicate ballot is made under subd. 1., the election officials shall, in the space on the ballot for official endorsement, identify the ballot as an "Overvoted Ballot" and write a serial number. On any duplicate ballot produced under subd. 1., the election officials shall, in the space on the ballot for official endorsement, identify the ballot as a "Duplicate Overvoted Ballot" and write a serial number. The election officials shall place the same serial number on each "Overvoted Ballot" and its corresponding "Duplicate Overvoted Ballot," commencing with number "1" and continuing consecutively for each of the ballots for which a "Duplicate Overvoted Ballot" is produced in that ward or election district. The election officials shall initial the "Duplicate Overvoted Ballot" ballots and shall place them in the container for return of the ballots. The "Overvoted Ballot" ballots and their envelopes shall be placed in the "Original Ballots" envelope.

(c) Ballots bearing write-in votes marked in the place designated for write-in votes, bearing the initials of an election official, not resulting in an overvote, and otherwise complying with the election laws as to marking shall be counted, tallied, and their votes recorded on a tally sheet provided by the municipal clerk. Ballots and ballot envelopes shall be separated and all ballots except any that are defective or overvoted shall be placed separately in the container for return of the ballots, along with the ballots marked "Duplicate Overvoted Ballots."

(3) The election officials shall examine the ballots to determine if any is damaged or defective so that it cannot be counted by the automatic tabulating equipment. If any ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, the election officials, in the presence of witnesses, shall make a true duplicate ballot of all votes on that ballot by using one of the marking devices so as to transfer all votes of the elector to an official ballot of that kind used by the elector who voted the original ballot in that election. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, whenever election officials of both of the 2 major political parties are present, the election officials acting under this subsection shall consist in each case of at least one official of each of the parties. On any damaged or defective original ballot, the election officials shall, in the space on the ballot for official endorsement, identify the ballot as a "Damaged Ballot" and write a serial number. On the duplicate ballot produced under this subsection, the election officials shall, in the space for official endorsement, identify the ballot as a "Duplicate Damaged Ballot" and write a serial number. The election officials shall place the same serial number on each "Damaged Ballot" and its corresponding "Duplicate Damaged Ballot," commencing with number "1" and continuing consecutively for each of the ballots for which a "Duplicate Damaged Ballot" is produced in the ward or election district. The election officials shall initial the "Duplicate Damaged Ballot" ballots, and shall place them in the container for return of the ballots. The officials shall place "Damaged Ballot" ballots and their envelopes in the "Original Ballots" envelope.

(4) The original ballots shall be preserved with the duplicate ballots and delivered by the inspectors to the municipal clerk. The officials shall then make out a slip indicating the number of electors voting in person, number of absentee ballots deposited in the ballot box, and the total number of electors of each ward served by the polling place who voted at the election, which shall be signed by all the inspectors.

(5) If the municipality has designated a central counting location to be used to count ballots under s. 7.51 (1), the inspectors shall count and deposit the paper ballots in the container. The inspectors shall then place the slip made out under sub. (4) in the container. The inspectors shall also place the tally sheet recording the write-in votes and other votes cast on paper ballots, and all other ballots, or the record of the votes cast on an electronic voting system where no ballots are distributed to electors, in the container and shall thereupon immediately seal the container with an adhesive seal provided by the municipal clerk for the purpose in such manner that the seal completely covers the opening in the container, and each of the inspectors shall sign the seal. The "Defective Ballots" envelope, and "Original Ballots" envelope each shall be securely sealed and the flap or end thereof of each signed by the inspectors and returned to the central counting location with the box for return of the ballots, enclosed ballots and returns. Thereupon, the municipal clerk or 2 of the election officials shall forthwith and by the most direct route transport the container and envelopes to the central counting location designated by the municipal clerk. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, the election officials shall consist in each case of at least one election official of each of the 2 major political parties, whenever officials of both parties are present.

History: 1979 c. 311; 1989 a. 192; 1997 a. 127; 2001 a. 16; 2005 a. 149; 2013 a. 179; 2015 a. 261.

5.86 Proceedings at central counting locations.

(1) All proceedings at each central counting location shall be under the direction of the municipal clerk or an election official designated by the clerk unless the central counting location is at the county seat and the municipal clerk delegates the responsibility to supervise the location to the county clerk, in which case the proceedings shall be under the direction of the county clerk or an election official designated by the county clerk. Unless election officials are selected under s. 7.30 (4) (c) without regard to party

affiliation, the employees at each central counting location, other than any specially trained technicians who are required for the operation of the automatic tabulating equipment, shall be equally divided between members of the 2 major political parties under s. 7.30 (2) (a) and all duties performed by the employees shall be by teams consisting of an equal number of members of each political party whenever sufficient persons from each party are available.

(2) At each central counting location, a team of election officials designated by the clerk or other election official having charge of the location under sub. (1) shall check the container returned containing the ballots to determine that all seals are intact, and thereupon shall open the container, check the inspectors' slip and compare the number of ballots so delivered against the total number of electors of each ward served by the polling place who voted, remove the ballots or record of the votes cast and deliver them to the technicians operating the automatic tabulating equipment. Any discrepancies between the number of ballots and total number of electors shall be noted on a sheet furnished for that purpose and signed by the election officials.

(3) Upon completion of the central count at a county seat, the county clerk shall return any ballots, statements, tally sheets, or envelopes relating solely to a municipal election to the appropriate municipal clerk and any ballots, statements, tally sheets, or envelopes relating solely to a school district election to the school district clerk. In addition, the county clerk shall report the results of the central count of votes for each office or referendum by ward or by combined wards authorized under s. 5.15 (6) (b) to the municipal clerk of the municipality where the votes are cast.

History: 1979 c. 311; 1985 a. 304; 1997 a. 127; 2001 a. 109; 2011 a. 115.

5.87 Tabulating votes. (1) If a central counting location is not utilized, the procedure for tabulating the votes by the automatic tabulating equipment shall be under the direction of the chief inspector and shall conform to the requirements of the automatic tabulating equipment. If any ballot is not accepted by the automatic tabulating equipment, the election officials shall make a duplicate ballot to replace that ballot in the manner prescribed in s. 5.85 (3). All proceedings at the polling place and at any central counting location shall be open to the public, but no person, except those employed and authorized for the purpose, may touch any ballot, container, envelope, return or equipment.

(2) The commission shall, by rule, prescribe uniform standards for determining the validity of votes cast or attempted to be cast with each electronic voting system approved for use in this state under s. 5.91. The rules shall apply only to situations that may arise in which the validity of a vote or attempted vote cast by an elector utilizing a particular system cannot be determined under s. 7.50.

History: 1979 c. 311; 1983 a. 484; 2003 a. 265; 2015 a. 118 s. 266 (10).

5.89 Official return. The return produced by the automatic tabulating equipment shall be appended to the tally sheet by the canvassers. The return constitutes a part of the official return for the ward or election district. The municipal clerk shall check the totals shown by the return and, if it appears that there is an obvious discrepancy with respect to the number of votes cast in any ward or election district, the clerk shall have the ballots for that ward or election district publicly retabulated to correct the return. Upon completion of the count, the return is open to the public.

History: 1979 c. 311.

5.90 Recounts. (1) Except as otherwise provided in this subchapter, recounts of votes cast on an electronic voting system shall be conducted in the manner prescribed in s. 9.01. Except as provided in this subsection, sub. (2), and s. 9.01 (1) (b) 8s., if the ballots are distributed to the electors, the board of canvassers shall recount the ballots with automatic tabulating equipment. The board of canvassers shall test the automatic tabulating equipment to be used prior to the recount as provided in s. 5.84, and then the official ballots or the record of the votes cast shall be recounted on

the automatic tabulating equipment. In addition, the board of canvassers shall check the ballots for the presence or absence of the initials and other distinguishing marks, shall examine the ballots marked "Rejected", "Defective", "Overvoted", and "Objected to" to determine the propriety of such labels, and shall compare the "Duplicate Overvoted Ballots" and "Duplicate Damaged Ballots" with their respective originals to determine the correctness of the duplicates. Unless a court orders a recount to be conducted by another method under sub. (2), the board of canvassers may determine to conduct the recount of a specific election by hand and may determine to conduct the recount by hand for only certain wards or election districts. If electronic voting machines are used, the board of canvassers shall perform the recount using the permanent paper record of the votes cast by each elector, as generated by the machines.

(2) Any candidate, or any elector when for a referendum, may, by the close of business on the next business day after the last day for filing a petition for a recount under s. 9.01, petition the circuit court for an order requiring ballots under sub. (1) to be counted by hand or by another method approved by the court. The petitioner in such an action bears the burden of establishing by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election.

(3) A court with whom a petition under sub. (2) is filed shall hear the matter as expeditiously as possible, without a jury. The court may order a recount of the ballots by hand or another method only if it determines that the petitioner has established by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election. Nothing in this section affects the right of a candidate or elector aggrieved by the recount to appeal to circuit court under s. 9.01 (6) upon completion of the recount.

History: 1979 c. 311; 1987 a. 391; 2005 a. 92, 451; 2007 a. 96; 2013 a. 176; 2015 a. 261.

Cross-reference: See also ch. EL 7, Wis. adm. code.

5.905 Software components. (1) In this section, "software component" includes vote-counting source code, table structures, modules, program narratives and other human-readable computer instructions used to count votes with an electronic voting system.

(2) The commission shall determine which software components of an electronic voting system it considers to be necessary to enable review and verification of the accuracy of the automatic tabulating equipment used to record and tally the votes cast with the system. The commission shall require each vendor of an electronic voting system that is approved under s. 5.91 to place those software components in escrow with the commission within 90 days of the date of approval of the system and within 10 days of the date of any subsequent change in the components. The commission shall secure and maintain those software components in strict confidence except as authorized in this section. Unless authorized under this section, the commission shall withhold access to those software components from any person who requests access under s. 19.35 (1).

(3) The commission shall promulgate rules to ensure the security, review and verification of software components used with each electronic voting system approved by the commission. The verification procedure shall include a determination that the software components correspond to the instructions actually used by the system to count votes.

(4) If a valid petition for a recount is filed under s. 9.01 in an election at which an electronic voting system was used to record and tally the votes cast, each party to the recount may designate one or more persons who are authorized to receive access to the software components that were used to record and tally the votes in the election. The commission shall grant access to the software components to each designated person if, before receiving access, the person enters into a written agreement with the commission that obligates the person to exercise the highest degree of reasonable care to maintain the confidentiality of all proprietary information to which the person is provided access, unless otherwise permitted in a contract entered into under sub. (5).

(5) A county or municipality may contract with the vendor of an electronic voting system to permit a greater degree of access to software components used with the system than is required under sub. (4).

History: 2005 a. 92; 2015 a. 118 s. 266 (10).

5.91 Requisites for approval of ballots, devices and equipment. No ballot, voting device, automatic tabulating equipment, or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is certified by the commission. The commission may revoke its certification of any ballot, device, equipment, or materials at any time for cause. The commission may certify any such voting device, automatic tabulating equipment, or related equipment or materials regardless of whether any such item is approved by the federal election assistance commission, but the commission may not certify any ballot, device, equipment, or material to be used in an electronic voting system unless it fulfills the following requirements:

(1) It enables an elector to vote in secrecy and to select the party for which an elector will vote in secrecy at a partisan primary election.

(3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.

(4) It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.

(5) It accommodates all referenda to be submitted to the electors in the form provided by law.

(6) The voting device or machine permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the automatic tabulating equipment or machine rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.

(7) It permits an elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(8) It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.

(9) It prevents an elector from voting for the same person more than once for the same office, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(10) It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.

(11) It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.

(12) It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.

(13) The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.

(14) It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.

(15) It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

(16) It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.

(17) Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.

(18) If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

History: 1979 c. 311; 1983 a. 484; 1985 a. 304; 2001 a. 16; 2003 a. 265; 2005 a. 92; 2011 a. 23, 32; 2015 a. 118 s. 266 (10); 2015 a. 261; 2017 a. 365 s. 111.

Cross-reference: See also ch. EL 7, Wis. adm. code.

5.92 Bond may be required. Before entering into a contract for the purchase or lease of an electronic voting system or any ballots, voting devices, automatic tabulating equipment or related equipment or materials to be used in connection with a system, any municipality may require the vendor or lessor to provide a performance bond with a licensed surety company as surety, guaranteeing the supply of additional equipment, parts or materials, provision of adequate computer programming, preventive maintenance or emergency repair services, training of election officials and other municipal employees or provision of public educational materials for a specified period, or guaranteeing the security of the computer programs or other equipment or materials to be utilized with the system to prevent election fraud, or such other guarantees as the municipality determines to be appropriate.

History: 1979 c. 311.

Cross-reference: See also ch. EL 7, Wis. adm. code.

5.93 Administration. The commission shall promulgate reasonable rules for the administration of this subchapter.

History: 1979 c. 311; 1985 a. 332 s. 251 (1); 2015 a. 118.

Cross-reference: See also ch. EL 7, Wis. adm. code.

5.94 Sample ballots; publication. When an electronic voting system employing a ballot that is distributed to electors is used, the county and municipal clerk of the county and municipality in which the polling place designated for use of the system is located shall cause to be published, in the type B notices, a true actual-size copy of the ballot containing the names of offices and candidates and statements of measures to be voted on, as nearly as possible, in the form in which they will appear on the official

5.94 ELECTIONS — GENERAL PROVISIONS; BALLOTS & VOTING

Updated 21–22 Wis. Stats. 24

ballot on election day. The notice may be published as a newspaper insert. Municipal clerks may post the notice if the remainder of the type B notice is posted.

History: 1979 c. 311; 2001 a. 16.

5.95 Elector information. The commission shall prescribe information to electors in municipalities and counties using various types of electronic voting systems to be published in lieu of the information specified in s. 10.02 (3) in type B notices whenever the type B notice information is inapplicable.

History: 1979 c. 311; 2015 a. 118 s. 266 (10).



Douglas County Clerk

Courthouse • 1313 Belknap Street • Room 101 • Superior, Wisconsin • 54880

Kaci Jo Lundgren, County Clerk

Phone: (715) 395-1568

FOR IMMEDIATE RELEASE

Tuesday, August 13, 2024

TOWN OF SUMMIT BALLOTS – INCORRECT ASSEMBLY DISTRICT

SUPERIOR, WI – On Tuesday, the Douglas County Clerk’s Office learned of a mistake involving ballots in the Town of Summit, which has about 700 registered voters.

Tuesday morning, shortly after polls opened, the Douglas County Clerk became aware that all in-person and absentee ballots the county printed for Town of Summit voters contained the wrong Assembly District. The ballots contain Assembly District 73 but should instead contain Assembly District 74. Wisconsin’s newly enacted district maps moved the Town of Summit from AD 73 into AD 74.

There is a contested Democratic Primary in AD 74 and a contested Republican Primary in AD 73. All other contests on the ballot contain the correct districts. All other ballots within Douglas County contain the correct districts. The County Clerk’s Office informed the candidates affected by this mistake earlier this morning.

The County Clerk’s Office does not plan to issue corrected ballots or attempt another potential remedy today for numerous reasons: there is not enough time for new ballots to be printed and delivered in one day; absentee ballots with the incorrect Assembly District have been circulating for weeks; voting equipment containing the incorrect districts has already been programmed and tested. Town of Summit voters do not need to change their voting plan – they should proceed to the polls as normal and no additional action from them is needed at this time.

After Election Day, Wisconsin law will likely prevent boards of canvass from being able to count votes in the Assembly District 73 race in the Town of Summit.

After Election Day, the County Clerk’s Office plans to examine the error to better understand how it occurred and how to prevent it in the future. “My office is committed to transparency and accuracy. Our protocols will be thoroughly reviewed and any procedures that are identified that could eliminate this type of error in the future will be implemented,” Kaci Jo Lundgren, Douglas County Clerk.

The Douglas County Clerk’s Office sincerely regrets this error and the inconvenience it has caused voters. Voters should not hesitate to contact the clerk’s office with any questions.

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