



Wisconsin Elections Commission

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MEMORANDUM

TO: Wisconsin County Clerks
Milwaukee County Election Commission

DATE: January 26, 2023

SUBJECT: Certification of Referendum Question and Type A Notice of Referendum for the April 4, 2023, Spring Election

Attached below are the Certification of Referendum Question and the Type A Notice of Referendum Election, and a discussion on referenda timeline in Appendix A. The Certification of Referendum Question is not required to be published, but the Type A Notice does require publication. The referendum is the result of 2023 Enrolled Joint Resolution 2 and 2023 Enrolled Joint Resolution 4, which can be found on the Wisconsin Elections Commission website at:

<https://elections.wi.gov/memo/certification-referendum-question-and-type-notice-referendum-april-4-2023-spring-election>.

The Type A Notice of Referendum must be published on March 7, 2023, the fourth Tuesday preceding the Spring Election. Whenever a weekly newspaper is used for publication, the notice appears in the newspaper's closest preceding issue. The notice must also include any county referendum question that will be on the Spring Election ballot.

The Type C Notice of Referendum, which includes the Attorney General's explanation of a "yes" or "no" vote, will be forwarded to you as soon as we have received the explanation language from the Office of the Attorney General. The Type C Notice must be published on April 3, 2023, the same time as the Types B and D Notices, and must also be posted at polling places.

If you have any questions, please contact the Help Desk at 608-261-2028 or elections@wi.gov.

Attachments:

Appendix A discussing referendum timelines
Type A Notice for Referenda
Certification of Referendum Ballot Questions

Wisconsin Elections Commissioners

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Appendix A

This appendix addresses inquiries that the Wisconsin Elections Commission has received concerning where state-level referenda are required to be filed 70 days before Spring Election.

Overall, our understanding is that the Wisconsin Elections Commission is the only filing officer for state-level referenda questions and the statutory ballot ordering requirements for state-level referenda fall to the Commission alone. The Commission is separately required by statute to certify all state-level referenda questions to county clerks. Numerous statutes are implicated in the process of filing state-level referenda questions and preparing ballots, which allow for possible disagreements over interpretation. The following explanation is intended to clarify why, for state-level referenda questions, Commission staff believe that the 70-day filing requirement applies only to the Commission and not to county clerks.

The filing of referenda petitions and questions is governed by Wis. Stat. § 8.37, which states in full that:

Unless otherwise required by law, all proposed constitutional amendments and any other measure or question that is to be submitted to a vote of the people, or any petitions requesting that a measure or question be submitted to a vote of the people, if applicable, shall be filed with the official or agency responsible for preparing the ballots for the election no later than 70 days prior to the election at which the amendment, measure or question will appear on the ballot. No later than the end of the next business day after a proposed measure is filed with a school district clerk under this section, the clerk shall file a copy of the measure or question with the clerk of each county having territory within the school district.

This statute covers the filing of all referenda questions in Wisconsin, notably including those that require filing officers to review large numbers of signatures before any referenda can appear on a ballot, which is not relevant to state level referenda. There are two areas here that may cause confusion.

The phrase “the official or agency responsible for preparing the ballots” may cause confusion because of overlapping ballot preparation responsibilities and the fact that most of the printing and distribution work lies with the county clerks. Starting with the singular words “official or agency,” there is clearly one entity that is responsible for receiving any individual referenda filing. “Official” references each individual clerk who is a filing officer, including county, municipal, school district, and other special purpose district clerks. “Agency” references the Wisconsin Elections Commission and the Milwaukee City and County Election Commissions. State-level referenda questions are filed with the agency of the Wisconsin Elections Commission, which is the entity responsible for preparing the form of “referendum ballots” for each state-level referendum election.

Though both county clerks and the Commission have responsibilities for preparing state-level ballots, the Commission’s responsibilities must precede the counties’ for the process to function coherently. Once the Commission certifies the referenda questions to the counties with the Type A and C notices, the county responsibilities begin. Wis. Stat. § 5.60(7) governs referendum ballots and states that “[e]xcept 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.” Wis. Stat. § 5.64(2)(am) explains in part that “[t]here 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.” Wis. Stat. § 5.64(2)(c) goes on to explain, in relevant part, that:

Appendix A

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.

Wisconsin broadly uses consolidated ballots under Wis. Stat. § 5.655, but, as shown in the quote directly above, it is still the Commission's responsibility to prepare and number the questions appearing on the state-level referendum "ballot" that all voters will receive, albeit on a combined ballot along with local contests and referenda applicable to local jurisdictions. For referenda questions for the Spring Election, Wis. Stat. § 10.06(1)(e) states in relevant part that "[w]hen there is a referendum, the Commission shall send Type A and C notices certifying each question to the county clerks as soon as possible, but no later than the first Tuesday in March." Wis. Stats. §§ 7.08(2)(a) and 7.10(2) explain certified lists and together show that the Commission must certify all state-level elections to the county clerks. These two statutes refer only to "candidates" and not to referenda, but Wis. Stat. § 10.06(1)(e) makes clear that the Commission also certifies referenda questions to county clerks, rather than each county clerk receiving and preparing state-level referenda questions individually, which could result in issues such as state-level questions appearing in a different order in different counties.

The Commission needs to receive an explanatory statement from the Attorney General, who is required by Wis. Stat. § 10.01(2)(c) to prepare the statement, before it can send the Type C notice to the county clerks. The county clerks would then include the text on the combined ballots for the April 4 Spring Election once the Spring Primary election in February determines which candidates will advance to the Spring Election.

A second source of confusion is the last sentence of Wis. Stat. § 8.37, which requires school district clerks to file the referenda with all county clerks with territory in the district the day after the school district clerks receives the filing. Since no similar language requires the Wisconsin Elections Commission (or municipal clerks) to file the text with the county clerks before the date provided in Wis. Stat. § 10.06(1)(e), a one-day turnaround cannot be assumed to apply. However, the Wisconsin Elections Commission's website may have created a misunderstanding on this point. Instead of specifically referencing school district clerks, the Commission's online calendar says that January 25 of this year is the "[d]eadline for [the] filing officer to file a copy of the referendum question intended for the Spring Election with the county clerk." It then references Wis. Stat. § 8.37 and states "next business day after receipt by filing officer." Since the next business day requirement only applies to school district clerks, the Commission will correct its calendar.

Commission staff hope that this explanation, though long, clarifies the Commission's understanding of filing and certifying state-level referenda questions for the Spring Election.