

# ELECTION RECOUNT PROCEDURES

September 2008



**Wisconsin Government  
Accountability Board**  
17 West Main Street, Suite 310  
P.O. Box 2973  
Madison, WI 53701-2973

Phone: (608) 266-8005  
FAX: (608) 267-0500  
E-mail: [gab@wi.gov](mailto:gab@wi.gov)  
Web: <http://gab.wi.gov>

**This is the version of the Recount Manual approved by the Government Accountability Board at the August 27, 2008 meeting.**

**This manual was revised May 20, 2009, but is scheduled for additional review and approval by the Government Accountability Board.**

# Table of Contents

<b>Procedures for Requesting a Recount</b>	<b>1-4</b>
Who May Request a Recount?	1
How is a Recount Requested?	1
What is a Recount Petition?	1-2
When is a Filing Fee Required?	2-3
Where Does the Petitioner File a Recount Petition?	3
When Must the Petition Be Filed?	3
What Happens When the Petition is Properly Filed?	3-4
<b>Procedures for Conducting the Recount</b>	<b>5-13</b>
When Does the Recount Begin?	5
Who Conducts the Recount?	5
Who May Attend the Recount?	5
Recount Preparations	5-6
What Does the Board of Canvassers Do?	6-7
How Does the Board of Canvassers Conduct the Recount?	7-13
Paper Ballots	7-10
Optical Scan Ballots	11-12
DRE Voting Equipment	12-13
Determining Voter Intent	13
<b>After the Recount</b>	<b>14</b>
What Does the Board of Canvassers Do After the Recount?	14
How Does a Candidate or Petitioner Challenge the Results?	14
<hr/>	
<b>Appendix</b>	
Sample Forms	1-5
Recount Petition	1
Recount Petition for Referendum	2
Order for Recount	3
Public Notice of Recount	4
Recount Minutes	5
Recount Fee Scenarios	6
Recount Checklists	7-10
Supplies and Materials	7
Paper Ballot	8
Optical Scan	9
Direct Recording Electronic (DRE)/Touch Screen Voting	10
GAB Counting Votes Manual	11-18
Wisconsin Statutes	19
§ 5.01(1) Scope	19
§ 5.06(1) Compliance review; appeal	19

§ 5.84(1) Testing equipment; requirements for programs and ballots	19
§ 5.90 Recounts	19
§ 6.221 Counting of absentee ballots for certain military electors; September primary and general election	19-20
§ 6.84 Construction	20
§ 6.86 Methods for obtaining an absentee ballot	20
§ 6.88(3) Voting and recording the absentee ballot	20
§ 6.89 Absent electors list public	20-21
§ 6.97 Voting procedure for individuals not providing required identification	21
§ 7.50 Elector intent	21-22
§ 7.51 Local board of canvassers	22-24
§ 9.01 Recount	24-29
§ 11.02 Determination of filing officer	30
§ 19.84 Public notice	30
§ 19.85 Exemptions	30-31
Wisconsin Administrative Code	31
GAB 3.04 Requiring provision of certain information by election-day voter registration applicants	31
GAB 5.01(2)-(5) & (7) Ballot security (pending legislative approval as of Aug. 22, 2008)	31

# Introduction

Elections are often decided by a few votes. In many cases they are decided by one or two votes out of the several hundred or even several thousand votes that are cast. An election may even end in a tie vote. These circumstances encourage a candidate, typically the one who loses the election, to have all the ballots counted again to assure all legal votes are counted properly, any illegal votes are not counted and the proper procedures for conducting the election were followed by the election officials.

This process of counting the ballots again is known as a recount. The procedures for requesting and conducting a recount are spelled out in the election laws. A recount is the exclusive remedy to test in court the right of a candidate to hold office based on the number of votes cast at an election.

This manual explains the statutory requirements for requesting a recount, attempts to explain ambiguity in those statutes, expands on the statutory requirements with recommended procedures for conducting a recount, and contains sample forms for use during the recount. This information is prepared by the Government Accountability Board pursuant to the requirements of Wis. Stat. § 9.01(10). If you have any questions about the recount process, please contact the Elections Division staff through any of the methods set out below:

Phone: 608-266-8005

Toll Free: 866-VOTE-WIS

Fax: 608- 267-0500

E-Mail: [gab@wi.gov](mailto:gab@wi.gov)

# Procedures for Requesting a Recount

## Who May Request a Recount?

Any individual who voted at a referendum election may request a recount of the referendum results. Only a candidate may request a recount of office results. Wis. Stat. § 9.01(1)(a)1.

## How is a Recount Requested?

A recount is requested by filing a sworn petition with the filing officer along with any applicable fee<sup>1</sup>. This must be done not earlier than the completion of the canvass and not later than 5 p.m. on the 3<sup>rd</sup> business day following the last meeting day of the board of canvassers determining the result for the office/referendum. Wis. Stat. § 9.01(1)(a)1.

## What is a Recount Petition?

A recount petition is a sworn statement requesting that the votes at an election be counted again and setting out the reasons why the ballots should be recounted. A verified recount petition (EB-186, sample available in the Appendix) must be filed with the filing officer along with any applicable fee.

The sworn petition must state the following information:

1. The petitioner must specifically request a recount or otherwise clearly indicate they desire a recount of particular election results. See Wis. Stat. § 9.01(1)(a)1.
2. The petitioner was a candidate for the office in question. If the results of a referendum election are at issue, the petition must state that the petitioner voted on the referendum question. Wis. Stat. § 9.01(1)(a)2.a.
3. The basis for requesting the recount. This can consist of a general statement that the petitioner believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for the office. Or, more specific grounds such as a particular defect, irregularity, or illegality in the conduct of the election may be listed in the petition. If specific defects, irregularities or illegalities are listed, the petitioner shall state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information received from other sources. Wis. Stat. § 9.01(1)(a)2.b.
4. The ward or wards to be recounted.<sup>2</sup> If a municipality consists of only one ward, the petition need only list the municipality in which the recount is desired. If all wards in a municipality, county or district are to be recounted, the petition may list the municipality, county or district

---

<sup>1</sup> Recount fees can fall into 3 tiers: (1) free, (2) \$5 per ward to be recounted, or (3) the actual cost of the recount, depending on the total number of votes cast and the difference between the votes cast for the leading candidate and those cast for the petitioner. Wis. Stat. § 9.01(1)(ag).

<sup>2</sup> If a candidate petitions for a recount in part, but not all, of the wards or municipalities within a jurisdiction or district, the opposing candidate may file a petition for a recount in any or all of the remaining wards or municipalities. The latter petition must be filed not later than 5:00 p.m. 2 days after the board of canvassers completes the first recount. The board of canvassers convenes at 9:00 a.m. on the next business day to count the remaining wards or municipalities. This right also applies to a referendum election. Any elector who voted at the election may petition to recount the remaining wards or municipalities in a referendum election. Wis. Stat. § 9.01(4).

without specifying each ward to be counted. The petitioner may also state “all wards” if the petitioner wants the entire election recounted. If no ward specifications are indicated, the filing officer will assume that all wards are to be recounted. Wis. Stat. § 9.01(1)(a)3.

5. A verification statement signed under oath before a person authorized to administer oaths. The verification statement must state that the petitioner, being first duly sworn, knows that the information in the petition is true based on the petitioner's personal knowledge or that the petitioner believes the information is true based on information received by the petitioner. See Wis. Stat. § 5.06(1).

After filing the recount petition, the petitioner may amend the petition. This may be done to include information discovered as a result of the facts gathered and determined by the board of canvassers during the recount. If the petitioner wants to amend his or her petition, the petitioner must file a motion with the board of canvassers to amend as soon as possible after the petitioner discovers or should have reasonably discovered the new information, and show that the petitioner was unable to include the information in the original petition. Wis. Stat. § 9.01(1)(a)4.

### **When is a Filing Fee Required?**

The filing fee, if any, should be estimated by the clerk and pre-paid<sup>3</sup> by the petitioner at the time of filing. The amount of the filing fee depends on the total votes cast for the office<sup>4</sup> as well as the difference between the total votes cast for the “leading candidate” and the total votes cast for the petitioner.

The “leading candidate” is the candidate winning the election. In an election where more than one candidate is elected to the same office or in a primary election when two or more candidates are nominated, the “leading candidate” is the person receiving the lowest number of votes, but who is still elected or nominated. It is not the candidate with the most votes. Wis. Stat. § 9.01(1)(ag)5.

#### If 1,000 or fewer votes are cast:

No fee is required if the difference in the total votes cast between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is less than 10. If the difference is at least 10 votes, a fee of \$5 per ward is required<sup>5</sup>. See Table 1.

**Table 1 – 1,000 or fewer votes cast**

	No fee	\$5 per ward
Less than 10 votes	<b>X</b>	
10 or more votes		<b>X</b>

#### If more than 1,000 votes are cast:

No fee is required if the difference in the total votes cast between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is no more than one half of one percent (.5%). If the difference is more than .5% but not more than 2%, the fee is \$5 per ward. If the difference is more than 2%, the petitioner must pay the actual cost of

<sup>3</sup> The fee must be paid in cash or in another form of payment acceptable to the filing officer. Wis. Stat. § 9.01(1)(ag)3.

<sup>4</sup> In an election in which more than one office of the same type is to be filled from the same territory, the total votes cast for the office is determined by dividing the total number of votes cast for the office by the number of offices to be filled. The difference between the total votes cast for the leading candidate and the petitioner is divided by the total votes cast for the office to calculate the percentage difference to determine the applicable fee, if any. Wis. Stat. § 9.01(1)(ag)5.

<sup>5</sup> The fee of \$5 per ward is calculated based on the number of wards recounted. In a polling place that combines wards, the fee is based on each separate ward included in the combination.

conducting the recount. See Table 2.

**Table 2 – More than 1,000 votes cast**

	No fee	\$5 per ward	Actual cost
.5% or less	<b>X</b>		
Greater than .5% but not more than 2%		<b>X</b>	
Greater than 2%			<b>X</b>

Please see “Recount Fee Scenarios” in the Appendix for a walkthrough of how to calculate a recount fee.

If a recount petition is not filed in the proper form by the filing deadline or is not accompanied with the required filing fee, the petitioner loses his or her right to a recount of the election. See Wis. Stat. §§ 9.01(1)(a)2 & (ag)3. A sample recount petition (EB-186) is available in the Appendix.

### **Where Does the Petitioner File the Recount Petition?**

The petitioner files the recount petition with the filing officer<sup>6</sup> with whom nomination papers or a declaration of candidacy are filed for that office. Wis. Stat. § 11.02.

### **When Must the Petition be Filed?**

If a municipal or county board of canvassers determines the election result, the timeframe for filing is not earlier than the completion of the canvass for the election and not later than 5:00 p.m. on the third business day after the last meeting day of the board of canvassers which determines the election or referendum results.

If the Government Accountability Board Chairperson or designee determines the election or referendum, the petition must be filed no earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and no later than 5:00 p.m. on the third business day after the Government Accountability Board receives the last statement from the county board of canvassers. Wis. Stat. § 9.01(1)(a)1.

### **What Happens When the Petition is Properly Filed?**

If the filing officer anticipates that a recount is likely, the filing officer should alert the members of the board of canvassers to be prepared to be available for a recount. The board of canvassers should arrange their schedules to allow them to be available for the recount.

Upon receipt of a valid recount petition, the filing officer shall prepare a public notice<sup>7</sup> of the recount pursuant to Wis. Stat. § 19.84 describing when and where the recount will be held, send a copy of the notice to the board of canvassers and make a copy of the petition and public notice for delivery to all candidates whose names were listed on the ballot for the same office. In a partisan primary, candidates from all parties for the same office must be notified by the filing officer. A candidate or agent designated by the candidate may personally accept delivery of the copy of the petition. Upon delivery, the candidate or agent shall be required to sign a receipt. If a candidate

<sup>6</sup> The filing officer for any statewide office or referendum is the GAB. The filing officer for any county office or referendum is the county clerk. The filing officer for a local office or referendum is the municipal clerk. The filing officer for any school board office or referendum is the school district clerk. Wis. Stat. § 11.02.

<sup>7</sup> A sample notice is available in the Appendix.

or agent does not personally accept delivery, the petition copies shall be given promptly to the sheriff. The sheriff shall promptly serve copies on the candidates without fee. Wis. Stat. § 9.01(2).

The board of canvassers shall convene no earlier than 9 a.m. on the day following delivery of notice to all candidates and no later than 9 a.m. on the day following the last day for filing of a recount petition. Wis. Stat. § 9.01(1)(b).

The petitioner and other candidates are encouraged to obtain legal counsel to represent them in any recount proceedings. The board of canvassers should also make arrangements to obtain legal advice as needed during the recount proceedings. Wis. Stat. § 9.01(3).

Please note that the Government Accountability Board should be notified of all recounts although formal notices are not required unless otherwise indicated by statute. In the event of a recount for state or federal office involving more than one county, the boards of canvassers shall consult with the Elections Division staff in order to ensure that uniform procedures are used to the extent practicable. The Elections Division staff will make arrangements for a teleconference through the affected county clerks prior to beginning of the recount. Candidates will be invited to participate and the teleconference will be open to the public. Wis. Stat. § 9.01(10).

# Procedures for Conducting the Recount

## **When Does the Recount Begin?**

The recount begins no earlier than 9 a.m. on the day following delivery of notice to all candidates and no later than 9 a.m. on the day following the last day for filing the recount petition. Wis. Stat. § 9.01(1)(ar)3. In a recount ordered by the Government Accountability Board, the board of canvassers shall convene no later than 9 a.m. on the second day following receipt of the order by the county clerk. Wis. Stat. § 9.01(1)(ar)3. If the following morning is a Saturday (or holiday) the Government Accountability Board recommends that the board of canvassers begin the recount on the Saturday (or holiday).

## **Who Conducts the Recount?**

The board of canvassers that determines the original election result conducts the recount, except for state and federal elections. For state and federal elections, the county boards of canvassers for the counties in which the contested votes are cast conduct the recount.

The Government Accountability Board recommends that the board of canvassers be composed of the same people who initially canvassed the election results. However, there may be substitutions among the members of the board of canvassers caused by illness or absence from the community during the recount. A list of substitute canvass board members should be developed before the recount begins. The minutes of the recount should reflect any change in canvass board members and the reason for the substitution.

## **Who May Attend the Recount?**

Any person may attend the recount. This includes the candidates, their representatives, their counsel, media representatives, and any other interested persons. Wis. Stat. § 9.01(3).

## **Recount Preparations**

The board of canvassers conducting the recount should be sure that it has all the supplies and materials needed for the recount. The supplies include sufficient paper and pens to record the minutes of the recount, new tally sheets (EB-105) and canvass report forms (EB-106). There is a checklist in the Appendix of the supplies that are needed. The original election materials to be received from each reporting unit include the following:

- All ballots to be recounted, contained in the original ballot bag or ballot container, (EB-101);
- All paper records from direct record electronic (DRE) voting devices;
- All logs of seals for electronic voting machines and tabulators;
- Both copies of the original poll lists, including any supplemental voter lists;
- The rejected absentee ballots, (contained in the brown carrier envelope, EB-102);
- The used absentee ballot certificate-affidavit envelopes, (contained in the white carrier envelope, EB-103);

- The original Inspectors' Statement, (EB-104);
- The original tally sheets, (EB-105), including the vote printouts generated by electronic voting and tabulating devices;
- The original canvass report of the election results, (EB-106);
- Any provisional ballot documentation, (EB-108 & EB-123);
- The test deck for any electronic voting equipment;
- A copy of any informational memoranda relating to the election and the recount prepared by the Government Accountability Board and sent to county and municipal clerks; and
- The list of absentee ballot applications prepared by each municipal clerk pursuant to Wis. Stat. § 6.89, and all written absentee ballot application forms filed pursuant to Wis. Stat. § 6.86(1)(a).

If these materials are not on hand when the recount is scheduled to begin, the Government Accountability Board recommends that the canvassers immediately obtain these materials before proceeding. In the event that the board of canvassers has the required materials for some, but not all the wards to be recounted at the time they are scheduled to begin the recount, the board of canvassers may begin the recount with those wards for which it has the required materials while the missing materials are being obtained.

The Government Accountability Board recommends that the board of canvassers note in the minutes if proper notice of the recount was given to the appropriate candidates and that the clerk notified each candidate of the place and time of the recount. Also, the board of canvassers should note if the recount was properly noticed as a public meeting under Wis. Stat. § 19.85.

### **What Does the Board of Canvassers Do?**

The duty of the board of canvassers is to recount the votes cast for the office in question and to correct the errors, if any, that were made at the original determination of the election results. The canvass board is also required to make a complete written record of the recount. Wis. Stat. § 9.01(5)(a).

Both sides must be given the opportunity to object and provide offers of evidence on:

- all objections to the recount itself,
- the composition of the board of canvassers,
- the procedures followed,
- any ballot cast at the election, and
- any other issues presented to the canvass board during the recount.

Wis. Stat. § 9.01(5).

This information and the canvass board's decisions must be recorded in the written minutes of the recount proceedings. A sample format for the minutes can be found in the Appendix.

In carrying out these responsibilities, the board of canvassers may hire tabulators who work at the canvass board's direction and who assist in counting the ballots. Tabulators may assist the board of canvassers in conducting the recount, but only members of the board of canvassers are competent to make any determination as to the validity of any vote tabulated. Wis. Stat. § 9.01(5)(b).

The canvass board members and the tabulators are the only persons who may handle and touch the ballots and other election materials. The board of canvassers must, however, allow the candidates, their representatives, and counsel to view and identify the election materials. With this in mind, the canvass board should exercise reasonable control over the conduct of the recount to assure that the canvassers and tabulators do not experience interference from any candidate, representative, counsel, media representative, or any member of the public. Wis. Stat. § 9.01(1)(b)11.

### **How Does the Board Conduct the Recount?**

The board of canvassers conducts the recount by following the procedures in Wis. Stat. §§ 5.90; 7.50; 7.51; & 9.01(1)(b). Please see the Appendix for checklists of the procedures described in detail below.

#### **Paper Ballots**

The procedures for recounting votes cast on paper ballots are set out below. Many of these steps also apply to recounting votes cast on electronic voting equipment. Keep in mind that all steps taken, objections made, evidence introduced, and decisions of the board of canvassers must be recorded in writing and preserved with the election materials. These procedures are conducted separately for each municipality and reporting unit within the municipality.

#### 1. Reconcile Poll Lists – Wis. Stat. § 9.01(b)1

The board reconciles the two poll lists and any supplemental lists to confirm the lists record the same voters, the same total number of electors who voted in the ward or municipality, and that the same supplemental information is noted. The canvassers determine from the poll lists the total number of voters, the number of absentee voters and identify any irregularities appearing on these lists. The canvassers note in the minutes the total number of persons who voted, how many absentee votes were cast and any irregularities found on the poll lists.

#### 2. Review Absentee Ballots and Materials – Wis. Stat. § 9.01(b)2

##### *Determine Number of Absentee Voters*

The Government Accountability Board recommends that the board of canvassers determines the number of absentee voters by reviewing the poll lists, the absentee ballot certificate envelopes and the list of absentee voters prepared by the municipal clerk pursuant to Wis. Stat. § 6.89 (Absentee Ballot Log).

##### *Review of Written Applications*

The board of canvassers then reviews the written applications for absentee ballots and the list of absentee voters maintained by the municipal clerk. There should be a written application for each absentee ballot envelope. In the case of indefinitely confined and military absentee voters, a designation on a list prepared by the municipal clerk is sufficient if it indicates that an absentee ballot was delivered to and returned by an absentee voter.

Do not reject an absentee ballot if there is no written application.<sup>8</sup> The board of canvassers records in the minutes the number of written absentee ballot applications on file. An explanation of any discrepancy should be included in the minutes.

#### ❑ *Rejected Absentee Ballots*

The board of canvassers examines the rejected absentee ballot certificate envelopes. These should have been placed in the brown carrier envelope (EB-102). Rejected absentee ballot certificate envelopes should have been identified by the poll workers on election night and marked “rejected.” The reason for the rejection should have been noted on the Inspectors’ Statement (EB-104).

The board of canvassers should make their own determination for each rejected absentee ballot certificate envelope.<sup>9</sup> Any improperly rejected ballots should be so marked and placed into the pool of ballots to be counted. If the number of voters is increased under this procedure the change should be recorded in the minutes. The minutes should reflect what action, if any, was taken on election night with respect to improperly rejected absentee ballot certificate envelopes.

#### ❑ *Defective Absentee Ballot Envelopes*

The board of canvassers next examines the used absentee ballot certificate envelopes (EB-122) contained in the white carrier envelope (EB-103). If you find any defective<sup>10</sup> absentee ballot certificate envelope not identified on election night it should be marked as defective, assigned a serial number, set aside, and properly preserved. A notation including a description of the defect should be made in the minutes.

The number of voters determined at the beginning of the recount is reduced by the total number of absentee ballots set aside under this procedure. This adjusted number is noted in the minutes and used whenever the number of voters is referred to during the recount. Do not remove ballots from the pool yet.

### 3. Ballot Container – Wis. Stat. § 9.01(b)3

The board of canvassers examines the ballot bag or ballot container (EB-101) to determine that it has not been tampered with, opened, or opened and resealed. The board of canvassers should verify that the tamper-evident seal matches the serial number on the Ballot Container Certification (EB-101) and the Inspectors’ Statement (EB-104). The Government Accountability Board recommends the board of canvassers should investigate any irregularities or possible tampering with the ballots and note its’ findings in the minutes.

---

<sup>8</sup> See Wis. Stat. § 6.84; Informal Opinion of GAB Staff Attorney Re: Recount of the Town of Walworth Recall Election (11/18/02); but see also *Walter V. Lee v. David Paulson*, 2001 WI App 19.

<sup>9</sup> See Wis. Stat. § 6.88(3) for procedures and guidance on accepting or rejecting absentee ballot certificate envelopes.

<sup>10</sup> An absentee ballot is defective only if it is not witnessed, or if it is not signed by the voter, or if the certificate accompanying an absentee ballot the voter received by fax or email is missing. Wis. Stat. § 9.01(b)2.

#### 4. Ballot Reconciliation – Wis. Stat. § 9.01(b)4

##### *Ballot Count – 4(a)*

The board of canvassers opens the ballot bag or ballot container and removes the contents. The canvassers or tabulators count the number of ballots in the ballot bag, excluding any ballots that were set aside by the poll workers on election night under the provisions of Wis. Stat. § 7.51(2). These “set aside” ballots should have been marked and bundled by the election inspectors on election night.

The board of canvassers reviews all ballots marked “Rejected,” “Defective” and “Objected To” to decide whether such ballots were correctly found to be “Rejected,” “Defective,” or “Objected To” when the ballots were first examined after the election. See the Counting Votes Manual provided in the Appendix.

##### *Separate Probable Absentee Ballots – 4(b)*

The canvassers then separate all the “probable absentee ballots”<sup>11</sup> from the other ballots. The number of probable absentee ballots should equal the number of properly completed certificate envelopes as determined by the board of canvassers above, the number of absentee ballots recorded on the registration list on election night, and the number of written applications. Any discrepancies should be recorded in the minutes.

If the board of canvassers previously determined that any absentee ballot certificate envelopes were defective, the board of canvassers draws at random from the pool of probable absentee ballots, without inspection, the number of ballots equal to the number of envelopes that have been determined defective. If the board of canvassers finds more defective absentee ballot envelopes than probable absentee ballots, the board of canvassers sets aside all probable absentee ballots. These ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board notes in the minutes the steps taken under this procedure and the results determined. Wis. Stat. § 9.01(1)(b)4.b.

##### *Reconciling the Number of Ballots with the Number of Voters*

If the number of voters is greater than or equal to the number of ballots, skip this step. Only in the situation where the number of ballots exceeds the number of voters should the board of canvass engage in the following procedure.

If the number of ballots still exceeds the number of voters, the board of canvassers or the tabulators place all the ballots face up to check for blank ballots. Any blank ballots (ballots which have not been marked for any office) shall be marked as to the reason for their removal, set aside and properly preserved. The canvass board should record this action in the minutes. Wis. Stat. § 9.01(1)(b)4.c.

If the number of ballots still exceeds the number of voters after removing all blank ballots, the board of canvassers places all ballots face down to check for initials. Any ballots not properly initialed by two inspectors or any probable absentee ballots not properly initialed by the municipal clerk (or deputy clerk) are set aside. The board of canvassers must, without inspection, randomly draw from these ballots as many ballots as are necessary to reduce the

---

<sup>11</sup> The board of canvassers shall presume that a ballot initialed only by the municipal clerk, executive director of the board of election commissioners, deputy clerk or secretary is an absentee ballot. Wis. Stat. § 9.01(1)(b)4.b.

number of ballots to equal the number of voters determined to have voted on election day less any defective absentee ballot certificate envelopes. Any ballots removed for lack of proper initials shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board records its actions in the minutes. Wis. Stat. § 9.01(1)(b)4.d.

If the number of ballots still exceeds the number of voters, the board of canvassers places the remaining ballots in the ballot bag. The board randomly draws out, without inspection, the number of ballots equal to the number of excess ballots. These ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The actions taken under this procedure are also recorded in the minutes. Wis. Stat. § 9.01(1)(b)4.e.

When the number of ballots equals the number of voters or if the number of voters exceeds the number of ballots, the board of canvassers returns the ballots to the ballot bag or container and thoroughly mixes the ballots. Wis. Stat. § 9.01(1)(b)5.

#### 5. Reviewing Provisional Ballots

The board of canvassers shall examine the Inspectors' Certificate for Provisional Ballots (EB-108), provisional ballot reporting form and Provisional Ballot Certificate envelopes (EB-123) to determine if provisional ballots were correctly processed. The canvass board should determine if all ballots for voters providing the required information<sup>12</sup> have been included in the count. The board shall record any discrepancies in the recount minutes. Wis. Stat. § 6.97.

#### 6. Reviewing Late Arriving Military Ballots

In the event of recount for an election contest following a September partisan primary or November general election, the canvass board should determine if all absentee ballots for late arriving military electors<sup>13</sup> were correctly processed and have been included in the count. The board shall record any discrepancies in the recount minutes.

#### 7. Counting the Ballots

The board of canvassers or tabulators then carefully counts the votes on each paper ballot.<sup>14</sup> The results are recorded on duplicate tally sheets (EB-105). These tally sheets are clearly labeled that they are for the election recount. The recount vote totals are recorded in the minutes. Wis. Stat. § 7.51; 9.01(1)(b)5m; GAB Counting Votes Manual (see Appendix).

If any person objects to any ballot, a majority of the board of canvassers decides whether the ballot is valid. The board of canvassers may consult with its legal counsel or the Government Accountability Board staff regarding any objection. The Government Accountability Board recommends that any such consultation should be recorded in the minutes.

**\*\*\* If no electronic voting equipment was used, skip to Step #15. \*\*\***

---

<sup>12</sup> See Wis. Stat. § 6.97 and Wis. Admin. Code GAB 3.04.

<sup>13</sup> See Wis. Stat. § 6.221

<sup>14</sup> Please refer to the GAB Counting Votes Manual in the Appendix for recommended procedures for counting votes.

## Electronic Voting Equipment Generally

The required and recommended procedures for recounting votes cast on electronic voting equipment are set out below and should be conducted separately for each ward or reporting unit. Keep in mind that all steps taken, objections made, evidence introduced, and decisions of the board of canvassers must be recorded in writing and preserved with the election materials.

### 8. Examine the voting machine

The board of canvassers shall make a record of the number of the seal, protective counter or other device, if any, before opening any of the voting equipment. The board of canvassers then examines the electronic voting equipment to determine that any seals are intact and match the log maintained by the poll workers and the municipal clerk. The canvass board notes in the minutes any irregularities or possible tampering with the device. Wis. Stat. §§ 5.90(1) & 9.01(1)(b)6; GAB 5.01.

### 9. Testing the Equipment

The board of canvassers tests the automatic tabulating equipment using the test deck and the same procedure as is used for a pre-election public test. A record of the test results should be noted in the minutes. Wis. Stat. §§ 5.84(1), 5.90(1).

## Optical Scan Voting Equipment Specifics

These are the additional requirements and recommendations for conducting a recount that involves optical scan equipment. Please keep in mind that all steps taken, objections made, evidence introduced, and decisions of the board of canvassers must be recorded in writing and preserved with the election materials. Note: The board of canvassers still needs to follow the procedures described above in Steps 1–9.

### 10. Programming

Optical Scan tabulating equipment may be reprogrammed to count only votes cast in the office being recounted, or only the votes cast for a referendum if the recount concerns a referendum question. After being retested in Step #8 by the board of canvassers and the candidates or their representatives, the ballots will be re-tabulated by the optical scan equipment. The ballots may not be hand counted without a court order. Wis. Stat. § 5.90(2).

If the tabulator is not reprogrammed, the re-tabulation will also count other offices. The Government Accountability Board recommends that these totals be separated, set aside and preserved. Recounted results for other offices should not be included in the canvass board report of recount results.

### 11. Duplicate Ballots

The canvass board compares the “Duplicate Overvoted Ballots” and “Duplicate Damaged Ballots” with their respective originals to determine the correctness of the duplicates. If the duplicates were remade incorrectly, the board of canvassers should set aside the incorrectly remade duplicate, mark it with the reason for its removal and create a new duplicate ballot and mark it as such. Wis. Stat. § 5.90(1).

## 12. Recount Ballots on Equipment

Each ballot shall be reviewed by the board of canvassers and may be inspected by the candidates or their representatives before being fed into the machine. If it appears the ballot may not be recorded correctly by the tabulator, or if objected to, the ballot is set aside to be examined by the board of canvassers for voter intent and counted separately from the machine count.

The board of canvassers then recounts the ballots on the automatic tabulating equipment and adds in any votes counted separately using new tally sheets to the results before preparing the revised canvass statement of the results in Step #15.

**\*\*\* If no DRE voting equipment was used, skip to Step #15. \*\*\***

### Direct Record Electronic (DRE) Voting Equipment Specifics

In many polling places across the state DRE voting machines are used in conjunction with paper ballots or optical scan ballots to enable individuals with disabilities to vote privately and independently. As a result the paper ballots and optical scan ballots should be counted first by following steps 1 through 12 as described above, if applicable.

The required and recommended procedures for recounting votes cast on DRE equipment are set out below and should be conducted separately for each ward or reporting unit. Keep in mind that all steps taken, objections made, evidence introduced, and decisions of the board of canvassers must be recorded in writing and preserved with the election materials.

## 13. Review the vote totals

The board of canvassers examines the printed vote totals generated by the DRE at the polling place after the polls closed. The canvass board compares the totals with the results from the count of the paper or optical scan ballots to verify the total count of voters equals or exceeds the number of votes cast across all 3 types of ballots (paper, optical scan and DRE). The canvass board notes in the minutes any inconsistencies with the election night totals.

## 14. Counting the votes

The board of canvassers removes the detachable paper record from the ballot container, EB-101. The board of canvassers or tabulators then carefully count the ballots for the election contest that is the subject of the recount. The petitioner, candidates and representatives may observe the paper record as it is counted. The board of canvassers may separate the individual voter records by cutting the paper record to facilitate the count.

The results are recorded on duplicate tally sheets (EB-105). These tally sheets are clearly labeled that they are for the election recount. The recount vote totals are recorded in the minutes.

If any person objects to any ballot, a majority of the board of canvassers decides whether the ballot is valid. The board of canvassers may consult with its legal counsel or the Government Accountability Board staff regarding any objection.

## 15. Prepare New Canvass Statement

After completing the recount, the board of canvassers prepares a statement of the revised election results on the canvass report (EB-106). Wis. Stat. § 9.01(1)(b)9.

### **Determining Voter Intent**

When counting paper or optical scan ballots, questions often arise concerning the intent of the elector. Poll workers have a duty to attempt to determine voter intent and give effect to that intent if it can be determined. Poll workers are expected to use common sense to determine the will of an elector based on the marks made by the elector on the ballot. The decisions of the poll workers may be reviewed by the board of canvassers conducting the recount. Wis. Stat. §§ 7.50, 7.51, 9.01(1)(b)11.

Even if an elector has not fully complied with the provisions of the election law, votes should be counted as intended by the elector to the extent that the elector's intent can be determined.<sup>15</sup> The Government Accountability Board has a manual, "Counting Votes," which is designed to assist the board of canvassers in determining voter intent. A copy of the "Counting Votes" manual is included in the Appendix. See Wis. Stat. § 5.01(1).

---

<sup>15</sup> See Wis. Stat. § 7.50(2) for the procedures for determining voter intent.

# After the Recount

## **What does the board of canvassers do after completing the recount?**

- If the recount is for a municipal election, the board of canvassers promptly forwards the results and minutes to the municipal clerk.
- If the recount is for a school board election, the board of canvassers promptly forwards the results and minutes to the school board clerk.
- If the recount is for a county election, the county board of canvassers promptly forwards the results and minutes to the county clerk.
- If the recount is for a state or federal election, the results and minutes of the recount are to be forwarded immediately to the Government Accountability Board and should be received no later than 13 days after the recount is ordered. Wis. Stat. § 9.01(1)(ar)3.

A copy of the minutes of any recount should be sent to the Government Accountability Board. For federal, state and county elections, the board of canvassers should also send copies of the minutes to the chief officers of the state or county committee for any registered political party who ran candidates for that office. Wis. Stat. § 9.01(5)(bm).

No certificate of election may be issued by the filing officer until the deadline for filing all appeals has passed and the election results are final.

## **How Does a Candidate or Petitioner Challenge the Results?**

The candidate or petitioner has a right to appeal the recount determination in circuit court. The appeal must be filed with the circuit court within five (5) business days of the completion of the recount in all counties concerned. Notice must also be served in person or by certified mail on all other candidates and persons who filed a written notice of appearance before the board of canvassers. If the recount affects a state or federal office or referendum, notice of the appeal must be served on the Government Accountability Board. See Wis. Stat. §§ 9.01(6), (7), (8) & 9.

The recount process and the subsequent judicial appeals is the exclusive remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process. Wis. Stat. § 9.01(11).

## **Conclusion**

This information is prepared pursuant to Wis. Stat. § 9.01(10). Petitioners, candidates and filing officers should seek legal counsel when they are involved in a recount. If you have any questions, concerns, suggestions or recommendations about the recount process, please contact the:

**Government Accountability Board**  
**17 West Main Street, Suite 310**  
**P.O. Box 2973**  
**Madison, WI 53701-2973**  
**Phone: 608-266-8005**  
**Fax: 608-267-0500**  
**Email: [gab@wi.gov](mailto:gab@wi.gov)**  
**Website: <http://gab.wi.gov>**

# Appendix

<b>Sample Forms</b>	1-5
Recount Petition	1
Recount Petition for Referendum	2
Order for Recount	3
Public Notice of Recount	4
Recount Minutes	5
<b>Recount Fee Scenarios</b>	6
<b>Recount Checklists</b>	7-10
Supplies and Materials	7
Paper Ballot	8
Optical Scan	9
Direct Recording Electronic (DRE)/Touch Screen Voting	10
<b>GAB Counting Votes Manual</b>	11-18
<b>Wisconsin Statutes</b>	19
§ 5.01(1) Scope	19
§ 5.06(1) Compliance reivew; appeal	19
§ 5.84(1) Testing of equipment; requirements for programs and ballots	19
§ 5.90 Recounts	19
§ 6.221 Counting of absentee ballots for certain military electors; September primary and general election	19-20
§ 6.84 Construction	20
§ 6.86 Methods for obtaining an absentee ballot	20
§ 6.88(3) Voting and recording the absentee ballot	20
§ 6.89 Absent electors list public	20-21
§ 6.97 Voting procedure for individuals not providing required identification	21
§ 7.50 Elector intent	21-22
§ 7.51 Local board of canvassers	22-24
§ 9.01 Recount	24-29
§ 11.02 Determination of filing officer	30
§ 19.84 Public notice	30
§ 19.85 Exemptions	30-31
<b>Wisconsin Administrative Code</b>	31
GAB 3.04 Requiring provision of certain information by election-day voter registration applicants	31
GAB 5.01(2)-(5) & (7) Ballot security (pending legislative approval as of Aug. 22, 2008)	31

# SAMPLE RECOUNT PETITION

In Re: The Election for  
(specify office)

Verified Petition  
for Recount

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom nomination papers are filed for that office):

1. That Petitioner was a candidate for the office of (specify office) in an election held on (specify\_date of election);
2. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the office of (specify office); and/or
3. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:  
  
(Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired; each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

\_\_\_\_\_  
Petitioner

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public (or other person authorized to administer oaths)

My Commission Expires \_\_\_\_\_  
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Government Accountability Board, 17 West Main Street, Suite 310, P.O. Box 2973, Madison, WI 53701-2973, (608) 266-8005.

**EB-186** (Rev.8/08)

# SAMPLE RECOUNT PETITION FOR REFERENDUM

In Re:    The Election for  
          (specify referendum)

Verified Petition  
for Recount

---

Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom the referendum was filed):

1. That Petitioner was an elector who voted upon the referendum in the election held on (specify\_date of election);
2. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the referendum of (specify referendum); and/or
3. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

(Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired; each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

\_\_\_\_\_  
Petitioner

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public (or other person authorized to administer oaths)

My Commission Expires \_\_\_\_\_  
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Government Accountability Board, 17 West Main Street, Suite 310, P.O. Box 2973, Madison, WI 53701-2973, (608) 266-8005.

**EB-186** (Rev.8/08)

# SAMPLE ORDER FOR RECOUNT

STATE OF WISCONSIN – (County)

**In the matter of:** )  
 )  
A Recount of the (Election) )  
for (Title of Office) )  
for the (District), held )  
on (Date) )

## ORDER FOR RECOUNT

On (Date Recount Petition was filed), a recount petition was filed by (Petitioner’s Name), a candidate for the office of (Office Title) for the (District), at the (Election) held on (Date).

The petition requests a recount of (list specific wards or municipalities).

The filing officer has reviewed the petition. The petition is sufficient. Any applicable fee has been received and accepted.

Pursuant to Wis. Stat. § 9.01:

### IT IS ORDERED THAT:

1. A recount be conducted of all the votes cast for the office of (Office Title) for the (District) at the (Election) held on (Election Date) in (list of specific wards or municipalities).
2. The Boards of Canvassers convene at (Time) on (Date) at (Location), to begin the recount.
3. The recount be completed by the board of canvassers immediately.
4. The clerk transmit a certified canvass report of the result of the recount to the Government Accountability Board immediately after the completion of the recount.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Clerk’s Name)  
(Clerk’s Title)

# SAMPLE PUBLIC NOTICE

---

## Notice of Recount for the Office of (Office Title) for the (District) in the (Election)

---

TO: All Candidates On The Ballot For The Office of (Office Title) for the (District) and  
Other Interested Persons

FROM: Wisconsin Government Accountability Board

SUBJECT: Recount of the Votes Cast for the Office of (Office Title) for the (District) in the  
(Election)

DATE: (Date)

A recount of the votes cast at the (Election Date) (Election) for the office of (Office Title) for the  
(District) will begin at the time and location set forth below:

**(Municipality)** – 9:00 a.m. on (Date), at (Location).

A copy of the recount petition is attached. This notice is given pursuant to s. 9.01(2), Wis. Stats.

You have the right to be present and to be represented by counsel to observe and challenge the votes  
cast and the board of canvassers' decisions at the election.

Attachment

# Sample Recount Minutes

Date of Recount:

County:

Office to be Recounted: *(Include District Number)*

Original Result: *(Candidates' Names and Votes for Each Candidate. If there was a tie, explain how it was broken.)*

Canvass Board Members: *(If substitute, give reason for substitution.)*

Other Personnel: *(Tabulators, Corporation Counsel, Clerical Support)*

Others Present:

Notification: *(Were candidates notified and was public notice given?)*

Electronic Voting Equipment Test Results:

*For Each Reporting Unit:*

Name of Municipality:

Reporting Unit:

Original Vote Totals for Reporting Unit:

Number of Voters from Registration List:

Number of Absentee Ballot Applications:

Number of Absentee Ballots:

Notes: *(Include a description of any discrepancies, irregularities, errors, problems, objections raised by observers. Record any decision of the board of canvassers. Identify any exhibits by description and number.)*

Recount Vote Totals for Reporting Unit:

Recount Results:

A copy of the minutes from any recount must be sent to the:

Government Accountability Board  
17 West Main Street, Suite 310  
P.O. Box 2973  
Madison, WI 53701-2973

# Recount Fee Scenarios

## Scenario #1: Village President

Candidate	Votes
A	1500
B	1450

In this scenario, candidate A would currently be elected to office. If a recount was requested, we determine the fee by first calculating the total votes cast for the office ( $1500+1450 = 2950$ ). Then we divide the difference between the leading candidate and the petitioner (50 votes) by the total votes cast (2950) and then multiply by 100 to get the percentage difference (1.69%).

So in this scenario, B would pay \$5/ward as the percentage difference is greater than .5% but not more than 2%.

## Scenario #2: School Board (vote for up to 3)

Candidates	Votes
A	1500
B	1000
C	920
D	910
E	900
F	800

In this scenario, candidates A-C would currently be elected to office. If a recount was requested, we determine the fee by first calculating the total votes cast for the office by adding up all the votes cast for the office (6030 total) and dividing it by the number of offices to be filled (3 in this scenario) to get a total of 2010. We then divide the difference between the leading candidate (C, as they are the candidate with the lowest number of votes still being elected to office) and the petitioner and multiply by 100 to get the percentage difference.

So in this case:

If D requested a recount, it would be a free recount. (difference is .49%, which is not greater than .5%)

If E requested a recount, the fee would be \$5/ward. (difference is .99%, which is greater than .5%, but not more than 2%)

If F requested a recount, the fee would be the actual cost of the recount. (difference is 5.97%, which is greater than 2%)

**General Checklist of Supplies and Materials Needed for the Recount:**

- Paper and Pens (To record the minutes of the recount!)
- Tape Recorder (Optional)
- Speaker Phone (for consultation with GAB staff or counsel)
- Test Deck for Electronic Voting Equipment Test
- New *Tally Sheets* (EB-105)
- New *Canvass Reports* (EB-106)
- Copies of any informational memoranda relating to the election and the recount prepared by the Government Accountability Board staff and sent to county and municipal clerks.
- Recount checklists and the *Elections Recount Procedures Manual* available from the Government Accountability Board

**Election Materials from Each Reporting Unit:**

- All ballots to be recounted, contained in the original ballot bag or ballot
- All paper ballot records from direct record electronic (DRE) voting devices
- All logs of seals for electronic voting machines and tabulators
- Container with the *Ballot Container Certificate* (EB-101)
- Both copies of the original *Poll List* (EB-107), including any supplemental voter lists
- The rejected absentee ballots, contained in the brown carrier envelope–*Certificate of Rejected Absentee Ballots* (EB-102)
- The used absentee ballot certificate envelopes, contained in the white carrier envelope–*Used Certificate Affidavit Envelopes of Absentee Electors* (EB-103)
- The *Inspectors' Certificate for Provisional Ballots* (EB-108), provisional ballot reporting form and *Provisional Ballot Certificate* envelopes (EB-123)
- The original *Inspectors' Statement* (EB-104)
- The original *Tally Sheets* (EB-105), including the vote printouts generated by electronic voting and tabulating devices
- The original election results–*Canvass Report* (EB-106)
- The list of absentee ballot applications prepared by each municipal clerk pursuant to Wis. Stat. § 6.89 and all written *Absentee Ballot Applications* (EB121) filed pursuant to Wis. Stat. § 6.86(1)(a)
- Materials related to tracking late arriving military ballots

# Recount Checklist

Hand Counted Paper Ballots

Municipality \_\_\_\_\_ Date \_\_\_\_\_  
Reporting unit \_\_\_\_\_ Contest \_\_\_\_\_

**This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.**

- Compare and reconcile poll lists.
- Absentee ballot review: number, applications, rejected, defective envelopes.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EB-104) and Ballot Container Certification (EB-101).
- Ballot count.
- Review ballots marked "rejected," "defective," or "objected to."
- Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
- Reconcile the number of ballots with the number of voters.
- Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Review late arriving military ballots.
- Hand count paper ballots and record on duplicate tally sheets (EB-105) accounting for voter intent.
- Add in any votes counted separately, and prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.

# Recount Checklist

Optical Scan Voting Equipment

Municipality \_\_\_\_\_ Date \_\_\_\_\_  
Reporting unit \_\_\_\_\_ Contest \_\_\_\_\_

**This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.**

- Compare and reconcile poll lists.
- Absentee ballot review: number, applications, rejected, defective envelopes.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EB-104) and Ballot Container Certification (EB-101).
- Ballot count.
- Review ballots marked "rejected," "defective," or "objected to."
- Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
- Reconcile the number of ballots with the number of voters.
- Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Review late arriving military ballots.
- Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EB-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Test the automatic tabulator (*May be skipped if the Board of Canvassers has conducted a previous test as part of this recount on the same memory card and machine that will be used for this reporting unit*).
- Manually screen ballots for marks that may not be recorded correctly by the tabulator. Review for voter intent and count separately.
- Tabulate ballots on the automatic tabulator.
- Add in any votes counted separately, and prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.

# Recount Checklist

Direct Recording Electronic (DRE)/Touch Screen Voting Equipment

Municipality \_\_\_\_\_ Date \_\_\_\_\_  
Reporting unit \_\_\_\_\_ Contest \_\_\_\_\_

**This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.**

- Compare and reconcile poll lists.
- Absentee ballot review: number, applications, rejected, defective envelopes.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EB-104) and Ballot Container Certification (EB-101).
- Ballot count.
- Review ballots marked "rejected," "defective," or "objected to."
- Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
- Reconcile the number of ballots with the number of voters.
- Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Review late arriving military ballots.
- Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EB-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Review vote totals generated by DRE at polling place.
- Hand count permanent paper record of votes generated by DRE and record on duplicate tally sheets (EB-105).
- Add in any votes counted separately, and prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.



---

---

# Counting Votes

---

---

A guide to counting votes for ballot candidates, write-in votes, and assistance in determining how to count irregular votes.

This manual sets out uniform standards that define what constitutes a vote in compliance with the Help America Vote Act of 2002.

## Part One:

Counting Votes at the Spring Primary, Spring Election and General Election (Rev.10/2002)

## Part Two:

Counting Votes at the September Partisan Primary (Rev.8/2002)

Government Accountability Board, P.O. Box 2973, Madison, WI  
53701-2973, 608-266-8005, <http://elections.state.wi.us>, [gab@wi.us](mailto:gab@wi.us)

# COUNTING VOTES

## AT THE SPRING PRIMARY, SPRING ELECTION & GENERAL ELECTION

### **Public Counting**

The counting of votes is always done **publicly** after the polls close at 8:00 p.m. The counting is done by the election inspectors. The governing body of a municipality may also appoint tabulators to assist election inspectors in the counting of votes. Any person, including candidates at the election, may observe the counting of votes.

### **Voter Intent**

When counting votes at any election, **voter intent is the controlling factor** in determining if and how a vote should be counted. When there is a question of how a vote should be counted because it is not clearly marked as the instructions on the ballot indicate, the decision is made by a majority of the election inspectors. Even though tabulators may be used to assist in the counting, the decision on how to treat a questionable ballot is made by the election inspectors. One common example of when a determination of voter intent and the validity of a ballot must be made is when an elector has overvoted for a particular office on the ballot. This ballot should be treated as an overvote for that office only. A recording is made on the Inspectors' Statement (EB-104) that a vote was not counted for that office because of an overvote. All other offices on that ballot must be counted as the voter intended.

### **Counting Paper Ballots**

**Accuracy is very essential when counting votes.** Election inspectors should familiarize themselves with the proper procedures for counting votes on paper ballots as set out on pages 51-53 of the "Election Day Manual for Wisconsin Election Officials." To alleviate fatigue and assure accuracy, all election inspectors and tabulators should count votes. For each different type of ballot or for each office to be counted, the duties should be rotated among all inspectors and tabulators.

Whenever a ballot is found to be defective, is objected to, or is rejected, the ballot must be identified with a number and a notation must be made on the Inspectors' Statement (EB-104).

### **Counting Write-In Votes**

Determining the proper way to count write-in votes raises several questions and, as in counting all votes, it is important to remember that if the voter's intent can be determined the write-in vote must be counted to reflect that intent. Another important point is that, in most cases, a write-in vote will take precedent over a vote for a person whose name is printed on the ballot for the same office.

**Where marksense or optical scan voting systems are used**, care must be taken to assure that write-in votes are counted when the elector fails to make a mark or connect the arrow next to the write-in line. Because the equipment will not pick up a write-in vote where there is no mark, the arrow is not connected, or the oval is not filled in, inspectors must **inspect each ballot** to determine if a write-in vote has been cast.

Following are several examples of when and when not to count write-in votes. Inspectors must also remember that all write-in votes cast for any person at the election must be listed on the tally sheet, regardless of whether or not the person is a registered write-in candidate.

The examples of when and when not to count write-in votes set out below include, but are not limited to,

general situations for all elections. In addition to these situations, there are special considerations when counting votes at the general election.

## GENERAL SITUATIONS

### **Count Write-in Votes When:**

1. The name of the person is misspelled, but the intent of the voter can be reasonably determined.
2. The name of the person is abbreviated, but the intent of the voter can be reasonably determined.
3. The name of the person contains a wrong initial or an initial is omitted.
4. Only the last name of a person is written in. If the person is a registered write-in candidate, and/or the intent of the voter can be reasonably determined.
5. An X or other mark is omitted. An X or any other mark is not required in order to cast a write-in vote.
6. A sticker contains only the name of a person and is placed on a ballot. The vote is counted for the person named for the office listed in the space where the sticker is placed.
7. A sticker contains only the name of a person and is placed in the margin. Voter intent must be determined. If the person named on the sticker has filed a campaign registration statement indicating the office sought, the vote should be counted for the person named on the sticker for the office.
8. A sticker contains the name and the office the person is seeking and is placed on the face of the ballot other than in a particular office space. This vote is counted for the person for the office listed on the sticker.
9. The instructions to voters are "Vote for one", and the voter makes an X or other mark in the box to the right of a name that is printed on the ballot and also writes in another person's name for the same office, only the write-in vote is counted. This is not an overvote.
10. The instructions to voters say "Vote for not more than two", and the voter makes an X or other mark in the box to the right of two names that are printed on the ballot and also writes in another person's name, only the write-in vote is counted. This is not an overvoted ballot.
11. In a nonpartisan election, a candidate's name is printed on the ballot for an office and the voter writes in that candidate for another office. The vote is counted for the office where the write-in occurs.
12. The name of a person, who has filed a campaign registration statement indicating the office sought, is written in under an office other than the one indicated on the campaign registration statement. The vote counts for the person for the office where the name is written.
13. A sticker containing the name of a candidate and the office sought is placed under a different office than the one indicated on the sticker. The vote counts for the person named on the sticker for the office under which the sticker is placed.

**Do Not Count Write-in Votes When:**

1. A name is misspelled or abbreviated and the intent of the voter can not be reasonably determined.
2. A write-in sticker is placed on the endorsement (back) side of a paper ballot.
3. A write-in sticker is found in the ballot box and is not attached to any ballot.
4. The instructions on the ballot are "Vote for one" and the name of more than one person has been written in for a single office. This is an overvote and no votes are counted for that office.
5. The instructions on the ballot are "Vote for One" and the name of more than one person has been written in and a vote has also been cast for a candidate whose name is printed on the ballot for the same office. This is an overvote and no votes are counted for that office.
6. In the general election, when a candidate's name is printed on the ballot for an office and the voter writes in that candidate's name for a different office.

**GENERAL ELECTION**

When counting votes at a General Election it is important to remember that all votes are counted for the person for the office in which the elector has cast the vote. If a name is written in by the elector the party affiliation does not matter when it comes to determining the number of votes cast for that person. All votes cast for an individual, for the same office, are added together even though they may have been written in under different party columns on the ballot.

**Straight Party Voting**

At a General Election electors have the option of casting a straight party vote for all the candidates of a designated political party, or casting individual votes for candidates of their choice. A straight party vote cannot be cast for candidates listed in the Independent column. An elector must cast votes individually for Independent candidates. Straight party votes are cast in one of the following ways:

1. Where paper ballots are used, by making an (X) in the circle at the top of the selected party column. There is no circle in the Independent column, because a straight party vote is not allowed here.
2. Where marksense or optical scan voting systems are used, by connecting the arrow or filling in the oval next to the selected party designation.

When a straight party vote has been cast, an elector may still vote individually for candidates of his or her choice under another party column. When an elector casts an individual vote for a candidate of a party different than the straight party vote, the individual vote must be counted for that office. A vote is also counted for all other offices under the straight party column selected by the voter.

When a straight party vote has been cast and the elector also marks individual votes for certain candidates within that same party, the straight party vote should be determined as the voter's intent and a vote must be counted for all candidates under that party column.

**When voting for Governor and/or Lieutenant Governor:**

If an elector writes in the name of a candidate for governor, but does not write in a name of a candidate for lieutenant governor, a vote is counted for the candidate for governor.

If an elector writes in the name of a candidate for lieutenant governor, but does not write in a name of a candidate for governor, a vote is counted for the candidate for lieutenant governor.

However a write-in vote for governor shall not be added to the votes of the same candidate if there are different combinations of governor/lieutenant governor. For example:

- a write-in vote for Mary Jones for governor and Samuel Smith for lieutenant governor may not be added to a write-in vote for Mary Jones for governor with a different candidate for lieutenant governor or no candidate for lieutenant governor.
- a write-in vote for Mary Jones for governor and Samuel Smith for lieutenant governor may not be added to a write-in vote for Samuel Smith for lieutenant governor with a different candidate for governor or no candidate for governor.
- a write-in vote for Mary Jones for governor may not be added to a write-in vote for Mary Jones for governor with a different candidate for lieutenant governor.
- a write-in vote for Samuel Smith for lieutenant governor may not be added to a write-in vote for Samuel Smith for lieutenant governor with a different candidate for governor.

In these situations, the write-in votes are listed separately on the tally sheet for each combination of candidates.

**When voting for President and Vice President of the United States:**

An elector casting a write-in vote for President and Vice President must designate the presidential candidate of his or her choice. A vote for a candidate for President only will be counted. If the elector casts a write-in vote for only a candidate for Vice President, the vote will not be counted.

This information was prepared by the staff of the Government Accountability Board, and represents the staff's view of the application of the law set out in s.7.50(2), Stats., to the general situations described. Election inspectors and candidates should review the law or consult an attorney about any specific application of the law. Any questions should be directed to an elections specialist, 608-266-8005.

# COUNTING VOTES AT THE SEPTEMBER PARTISAN PRIMARY

## Public Counting

Counting votes is always done publicly after the polls close at 8:00 p.m. Counting is done by the election inspectors. The governing body of a municipality may also appoint tabulators to assist election inspectors with counting votes. Any person, including candidates at the election, may observe the counting of votes.

## Voter Intent

When counting votes, voter intent is the controlling factor in determining if and how a vote should be counted. When there is a question of how a vote should be counted because the vote is not clearly marked as the instructions on the ballot indicate, the decision is made by a majority of the election inspectors. Even though tabulators may be used to assist in counting, the decision on how to treat a questionable ballot is made by the election inspectors. One common example of when a determination of voter intent must be made is when an elector has overvoted a particular office on the ballot. This ballot should be treated as an overvote for that office only. A record is made on the Inspectors' Statement (EB-104) that a vote was not counted for that office because of an overvote. All other offices on that ballot must be counted as the voter intended.

## Counting Paper Ballots

Accuracy is very essential when counting votes. Election inspectors should familiarize themselves with the proper procedures for counting votes on paper ballots. See pages 19-21 of the "Election Day Manual for Wisconsin Election Officials." To alleviate fatigue and assure accuracy, all election inspectors and tabulators should count votes. The duties should be rotated among all inspectors and tabulators for each different type of ballot or for each office to be counted.

Whenever a ballot is found to be defective, is objected to, or is rejected, a notation must be made on the Inspectors' Statement (EB-104).

## Counting Write-In Votes

Determining the proper way to count write-in votes raises several questions. It is important to remember that if the voter's intent can be determined, the write-in vote must be counted to reflect that intent. Another important point is that, in most cases, a write-in vote will take precedence over a vote for a person whose name is printed on the ballot for the same office.

Where marksense voting systems are used, care must be taken to assure that write-in votes are counted when the elector fails to make a mark or connect the arrow next to the write-in line. Because the marksense equipment will not pick up a write-in vote where there is no mark or the arrow is not connected, inspectors must inspect **each** ballot to determine if a write-in vote has been cast.

Following are several examples of when and when not to count write-in votes. Inspectors must also remember that all write-in votes cast for any person at the election must be listed on the tally sheet, regardless of whether or not the person is a registered write-in candidate.

The examples of when and when not to count write-in votes set out below include, but are not limited to, general situations for all elections. In addition to the general situations there are special considerations where punch card electronic voting systems are used, and when counting votes at partisan primaries and general elections.

## GENERAL SITUATIONS

### **Count Write-in Votes When:**

1. The name of the person is misspelled, but the intent of the voter can be reasonably determined.
2. The name of the person is abbreviated, but the intent of the voter can be reasonably determined.
3. The name of the person contains a wrong initial or an initial is omitted.
4. Only the last name of a person is written in. If the person is a registered write-in candidate, and/or the intent of the voter can be reasonably determined.
5. An X or other mark is omitted. An X or any other mark is not required in order to cast a write-in vote.
6. A sticker contains only the name of a person and is placed on a ballot. The vote is counted for the person named for the office listed in the space where the sticker is placed.
7. A sticker contains only the name of a person and is placed in the margin. Voter intent must be determined. If the person named on the sticker has filed a campaign registration statement indicating the office sought, the vote should be counted for the person named on the sticker for the office.
8. A sticker contains the name, the political party and the office the person is seeking and is placed on the face of the ballot other than in a particular office space. This vote is counted for the person for the political party and office listed on the sticker.
9. The instructions to voters are "Vote for one", and the voter makes an X or other mark in the box to the right of a name that is printed on the ballot and also writes in another person's name for the same office, only the write-in vote is counted. This is not an overvote.
10. The name of a person, who has filed a campaign registration statement indicating the office sought, is written in under an office other than the one indicated on the campaign registration statement. The vote counts for the person for the office where the name is written.
11. A sticker containing the name of a candidate and the office sought is placed under a different office than the one indicated on the sticker. The vote counts for the person named on the sticker for the office under which the sticker is placed.

### **Do Not Count Write-in Votes When:**

1. A name is misspelled or abbreviated and the intent of the voter can not be reasonably determined.
2. A write-in sticker is placed on the endorsement (back) side of a paper ballot.
3. A write-in sticker is found in the ballot box and is not attached to any ballot.
4. The instructions on the ballot are "Vote for one" and the name of more than one person has been written in for a single office. This is an overvote and no votes are counted for that office.
5. The instructions on the ballot are "Vote for One" and the name of more than one person has been written in and a vote has also been cast for a candidate whose name is printed on the ballot for the same office. This is an overvote and no votes are counted for that office.

## OPTICAL SCAN OR MARKSENSE VOTING SYSTEMS

At a September partisan primary, an elector may vote for candidates of only one political party or for candidates on the independent ballot. For this reason, electors casting votes on an optical scan or marksense electronic voting system may select a party preference. Selecting the party of choice will not prevent crossover voting, but it is a safeguard so that a voter will not lose all votes if he or she does crossover. Write-in votes are not permitted on the independent ballot.

### **Count Write-in Votes at a Partisan Primary When:**

1. The voter writes in the name of a registered write-in candidate, but does not include the party and/or the office.
2. A sticker contains the name, political party and office the person is seeking and is placed anywhere on the face of a marksense ballot other than in a particular office space. This vote is counted for the person, party and office listed on the sticker.
3. The voter has written in the name of a person for an office, and has also voted for a person whose name is printed on the ballot for the same office. This is not treated as an overvoted ballot. In this case, the name written in must be counted and the vote for the person whose name is printed on the ballot is not counted.
4. The voter has selected a party preference, and writes in the name of a person but does not include the political party. The vote is counted for that person in the party selected.
5. A candidate's name is printed on the ballot for one office and the voter writes in that candidate's name for another office for the same party.
6. The voter has selected a party preference, has voted for candidates in more than one political party and writes in the name of a person in the write-in section. The votes cast for the candidates in the political party selected will be counted. The write-in vote is counted as a vote in the political party selected.
7. The voter has not selected a party preference, but has voted for candidates in one political party and then writes in the name of a person in the write-in section of the ballot. The write-in vote is counted as a vote in the party of the candidates voted for in the party section.

### **Do Not Count Write-in Votes at a Partisan Primary When:**

1. The voter has selected a party preference choice, and then writes in the name of a person for an office of a different political party. This creates a crossover vote for that office only.
2. The voter has not selected a party preference, but has cast votes in one political party, and then writes in the name of a person and a different party creating a crossover vote. In this case, the entire ballot is not counted.
3. A candidate's name is printed on the ballot for an office and is written in for an office on the ballot of a different political party.
4. If the voter has not selected a party preference and writes in names of persons in the write-in section of the ballot, no votes will count. Without party designation, write-in votes cannot be attributed to a party.

This information was prepared by the staff of the Government Accountability Board, and represents the staff's view of the application of the law set out in s.7.50(2), Stats., to the general situations described. Election inspectors and candidates should review the law or consult an attorney about any specific application of the law. Any questions should be directed to an elections specialist, 608-266-8005.(rev.08/2008)

**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.

**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 board 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 board 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.

**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 1 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.

**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 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” 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. 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.  
**Cross Reference:** See also ch. GAB 7, Wis. adm. code.

**6.221 Counting of absentee ballots for certain military electors; September primary and general election. (1)** In this section, “military elector” has the meaning given in s. 6.36 (2) (c) and active duty status for any election is determined as of election day.

**(2)** Each certificate envelope that is mailed or transmitted to a military elector under this section shall be clearly labeled as “Cast by a military elector under s. 6.221, Wis. Stats., and may be eligible to be counted after election day.”

**(3) (a)** At the September primary, a ballot that is cast under s. 6.22 by an elector who is a military elector, that is received by mail from the U. S. postal service, and that is postmarked no later than election day shall be counted as provided in this section if it is received by a municipal clerk no later than 5 p.m. on the 7th day after the election. **(b)** At the general election, a ballot that is cast under s. 6.22 by an elector who is a military elector, that is received by mail from the U.S. postal service, and that is postmarked no later than election day shall be counted as provided in this section

if it is received by a municipal clerk no later than 5 p.m. on the 10th day after the election.

(4) For purposes of sub. (3), if a certificate envelope is not postmarked or has a postmark that is not legible to the board of canvassers, and the envelope was received by mail from the U.S. postal service in the manner and within the period prescribed in sub. (3), it is presumed that the envelope was placed in the mail on or before election day, unless established by a preponderance of the evidence to the contrary.

(5) No later than the closing hour of the polls on the day of the September primary and the day of the general election, the municipal clerk of each municipality 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 military electors under this section and that have not been returned to the polling places where the electors reside by the closing hour on election day. The posting shall not include the names or addresses of any military electors.

(6) (a) Whenever the municipal clerk of any municipality receives an absentee ballot cast by an elector who is a military elector under this section and the ballot is not received in sufficient time for delivery to the polling place serving the residence of the elector on election day but is received within the time specified in sub. (3), the clerk shall promptly provide written notice to the board of canvassers of each municipality, special purpose district, and county that is responsible for canvassing the election of the number of such ballots that have been cast received by the clerk in each ward or election district. (b) Whenever a board of canvassers receives notification from a municipal clerk under par. (a), the board of canvassers shall reconvene no later than 9 a.m. on the day after the last day permitted for acceptance of absentee ballots under sub. (3) and shall proceed to open and record the names of the military electors whose ballots have been received. If the ballot cast by a military elector is otherwise valid, the board of canvassers shall count the ballot and adjust the statements, certifications, and determinations accordingly. If the municipal clerk transmits returns of the election to the county clerk, the municipal clerk shall transmit to the county clerk a copy of the amended returns together with all additional ballots and envelopes reviewed by the board of canvassers and with amended tally sheets.

**History:** 2005 a. 451.

**6.84 Construction. (1)** LEGISLATIVE POLICY. The legislature finds that voting is a constitutional right, the vigorous exercise of which should be strongly encouraged. In contrast, voting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse; to prevent overzealous solicitation of absent electors who may prefer not to participate in an election; to prevent undue influence on an absent elector to vote for or against a candidate or to cast a particular vote in a referendum; or other similar abuses.

**6.86 Methods for obtaining an absentee ballot. (1)**

(a) Any elector who is registered to vote whenever required and who qualifies under ss. 6.20 and 6.85 as an absent elector may make written application to the municipal clerk for an official ballot by one of the following methods:

1. By mail.
2. In person at the office of the municipal clerk or at an alternate site under s. 6.855, if applicable.
3. By signing a statement under sub. (2) (a).
4. By agent as provided in sub. (3).
5. By delivering an application to a special voting deputy under s. 6.875 (6).
6. By electronic mail or facsimile transmission as provided in par. (ac).

**6.88 Voting and recording the absentee ballot.**

(3) (a) Except in municipalities where absentee ballots are canvassed under s. 7.52, at any time between the opening and closing of the polls on election day, the inspectors shall, in the same room where votes are being cast, in such a manner that members of the public can hear and see the procedures, open the carrier envelope only, and 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 inspectors find that the certification has been properly executed, the applicant is a qualified elector of the ward or election district, and the applicant has not voted in the election, they shall enter an indication on the poll list next to the applicant's name indicating an absentee ballot is cast by the elector. They shall then open the envelope containing the ballot in a manner so as not to deface or destroy the certification thereon. The inspectors 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 inspectors shall verify that the ballot has been endorsed by the issuing clerk. If the poll list indicates that proof of residence under s. 6.34 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 inspectors shall proceed as provided under s. 6.97 (2). The inspectors shall then deposit the ballot into the proper ballot box and enter the absent elector's name or voting number after his or her name on the poll list in the same manner as if the elector had been present and voted in person.

(b) When the inspectors find 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, except in municipalities where absentee ballots are canvassed under s. 7.52, that the certificate of an elector who received an absentee ballot by facsimile transmission or electronic mail is missing, or if proof is submitted to the inspectors that an elector voting an absentee ballot has since died, the inspectors shall not count the ballot. The inspectors shall endorse every ballot not counted on the back, "rejected (giving the reason)". The inspectors 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 inspectors shall endorse the envelope, "rejected ballots" with a statement of the ward or election district and date of the election, signed by the chief inspector and one of the inspectors representing each of the 2 major political parties and returned to the municipal clerk in the same manner as official ballots voted at the election.

(c) The inspectors 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 by reason of a felony conviction. If the inspectors receive an absentee ballot that has been cast by an elector whose name appears on the poll list as ineligible for that reason, the inspectors shall challenge the ballot as provided in s. 6.92 and treat the ballot in the manner provided in s. 6.95.

**History:** 1971 c. 304 s. 29 (2); 1975 c. 85, 199; 1977 c. 394 ss. 43, 53; 1979 c. 232, 260; 1983 a. 183, 484; 1987 a. 391; 1999 a. 49, 182; 2001 a. 38, 109; 2003 a. 265; 2005 a. 451.

**6.89 Absent electors list public.** The municipal clerk shall keep a list of all electors who make application for an absent elector's ballot and who have voted under the absent elector provisions giving the name, address and date of application. The list shall be open to public inspection.

**6.97 Voting procedure for individuals not providing required identification. (1)**

Whenever any individual who is required to provide proof of residence under s. 6.34 in order to be permitted to vote appears to vote at a polling place and cannot provide the required proof of residence, the inspectors shall offer the opportunity for the individual to vote under this section. If the individual wishes to vote, the inspectors shall provide the elector with an envelope marked "Ballot under s. 6.97, stats." on which the serial number of the elector is entered and shall require the individual to execute on the envelope a written affirmation stating that the individual is a qualified elector of the ward or election district where he or she offers to vote and is eligible to vote in the election. The inspectors shall, before giving the elector a ballot, write on the back of the ballot the serial number of the individual corresponding to the number kept at the election on the poll list or other list maintained under s. 6.79 and the notation "s. 6.97". If voting machines are used in the municipality where the individual is voting, the individual's vote may be received only upon an absentee ballot furnished by the municipal clerk which shall have the corresponding number from the poll list or other list maintained under s. 6.79 and the notation "s. 6.97" written on the back of the ballot by the inspectors before the ballot is given to the elector. When receiving the individual's ballot, the inspectors shall provide the individual with written voting information prescribed by the board under s. 7.08 (8). The inspectors shall indicate on the list the fact that the individual is required to provide proof of residence but did not do so. The inspectors shall notify the individual that he or she may provide proof of residence to the municipal clerk or executive director of the municipal board of election commissioners. The inspectors shall also promptly notify the municipal clerk or executive director of the name, address, and serial number of the individual. The inspectors shall then place the ballot inside the envelope and place the envelope in a separate carrier envelope.

(2) Whenever any individual who votes by absentee ballot is required to provide proof of residence in order to be permitted to vote and does not provide the required proof of residence under s. 6.34, the inspectors shall write on the back of the absentee ballot the serial number of the individual corresponding to the number kept at the election on the poll list or other list maintained under s. 6.79 and the notation "s. 6.97". The inspectors shall indicate on the list the fact that the individual is required to provide proof of residence but did not do so. The inspectors shall promptly notify the municipal clerk or executive director of the municipal board of election commissioners of the name,

address, and serial number of the individual. The inspectors shall then place the ballot inside an envelope on which the name and serial number of the elector is entered and shall place the envelope in a separate carrier envelope.

(3) Whenever the municipal clerk or executive director of the municipal board of election commissioners is informed by the inspectors that a ballot has been cast under this section, the clerk or executive director shall promptly provide written notice to the board of canvassers of each municipality, special purpose district, and county that is responsible for canvassing the election of the number of ballots cast under this section in each ward or election district. The municipal clerk or executive director then shall determine whether each individual voting under this section is qualified to vote in the ward or election district where the individual's ballot is cast. The municipal clerk or executive director shall make a record of the procedure used to determine the validity of each ballot. If, prior to 4 p.m. on the day after the election, the municipal clerk or executive director determines that the individual is qualified to vote in the ward or election district where the individual's ballot is cast, the municipal clerk or executive director shall notify the board of canvassers for each municipality, special purpose district and county that is responsible for canvassing the election of that fact.

(4) Whenever a board of canvassers receives timely notification from the municipal clerk or executive director of the board of election commissioners under sub. (3) that an individual who has voted under this section is qualified to vote in the ward or election district where the individual's ballot is cast, the board of canvassers shall promptly reconvene and, if the ballot cast by the individual is otherwise valid, shall count the ballot and adjust the statements, certifications and determinations accordingly. If the municipal clerk or executive director transmits returns of the election to the county clerk or board of election commissioners, the municipal clerk or executive director shall transmit to the county clerk or board of election commissioners a copy of the amended returns together with all additional ballots counted by each board of canvassers.

**History:** 2003 a. 265; 2005 a. 253, 451.

**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 or affixes a sticker 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:

(a) At a general election, if the elector places a mark, symbol or sticker under a party designation at the head of a column in or near the space indicated for that purpose, it is a vote for all the candidates whose names appear in the marked column except as otherwise provided in this paragraph. If a name is stricken, it is not a vote for that candidate. If a name is written in, it is a vote for the write-in candidate. If a sticker is attached it is a vote for the candidate whose name appears on the sticker. If in some other column there is a mark in the square to the right of a specific candidate's name or at the place designated on the ballot for marking a vote for a specific candidate for the same office, it is a vote for that specific candidate and no vote may be counted for the candidate for the same office in the column marked for a straight party vote.

(b) A ballot cast without any marks or stickers 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.

(e) No write-in vote shall be regarded as defective due to misspelling a candidate's name, or by abbreviation, addition, omission or use of a wrong initial in the name. 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.

(f) If a sticker applied to the ballot lists a candidate's name and the office which the candidate seeks, it is a vote for the name appearing on the sticker even if the sticker does not contain a box or the elector omits the cross to the right of the name, or makes a cross in another column for a candidate for the same office. If a sticker is pasted over the name of any candidate printed on the ballot, it is a vote for the candidate shown on the sticker but no vote may be counted for the candidate over which the sticker is pasted. Only stickers appearing on the face of the ballot may be counted.

(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 or pastes a sticker in the position for an office, it is a vote for that office, even if the elector writes in or the sticker indicates 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.

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*, 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 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 ballots cast 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 inspectors 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.

**(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 1<sup>st</sup> 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 by 4 p.m. on the day following each such election. The municipal clerk shall deliver the ballots, statements, tally sheets, lists, and envelopes for his or her municipality relating to any county, technical college district, state, or national election to the county clerk 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 no later than 4 p.m. on the day after receiving any corrected returns under s. 6.221 (6) (b). 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.

**Cross Reference:** See also ch. GAB 5, Wis. adm. code.

#### **9.01 Recount. (1) PETITION; FEES; GENERAL PROCEDURES.**

(a) 1. Any candidate voted for at any election or any elector

who voted upon any referendum question at any election may petition for a recount. The petitioner shall file a verified petition or petitions with the proper clerk or body under par. (ar) not earlier than the time of completion of the canvass and not later than 5 p.m. on the 3rd business day following the last meeting day of the municipal or county board of canvassers determining the election for that office or on that referendum question prior to issuance of any amended return under s. 6.221 (6) (b) or, if more than one board of canvassers makes the determination, not later than 5 p.m. on the 3rd business day following the last meeting day of the last board of canvassers which makes a determination prior to issuance of any amended return under s. 6.221 (6) (b). If the chairperson of the board or chairperson's designee makes the determination for the office or the referendum question, the petitioner shall file the petition not earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and not later than 5 p.m. on the 3rd business day following the day on which the government accountability board receives the last statement from a county board of canvassers for the election or referendum.

2. Each verified petition under subd. 1. shall state all of the following:

a. That at the election the petitioner was a candidate for the office in question or that the petitioner voted on the referendum question in issue.

b. That the petitioner is informed and believes that a mistake or fraud has been committed in a specified ward or municipality in the counting and return of the votes cast for the office or upon the question or that another specified defect, irregularity, or illegality occurred in the conduct of the election.

3. The petition under subd. 1. shall specify each ward, or each municipality where no wards exist, in which a recount is desired. If a recount is requested for all wards within a jurisdiction, each ward need not be specified.

4. The petition under subd. 1. may be amended to include information discovered as a result of the investigation of the board of canvassers or the chairperson of the board, or chairperson's designee, after the filing of the petition if the petitioner moves to amend the petition as soon as possible after the petitioner discovers, or reasonably should have discovered, the information that is the subject of the amendment and if the petitioner was unable to include the information in the original petition.

(ad) Upon receiving a petition for a recount, the clerk or body receiving the petition shall calculate any fee due under par. (ag) 1m. or reasonably estimate any fee due under par. (ag) 2. The clerk or body shall provide the petitioner promptly with the total due or estimate.

(ag) 1. If the difference between the votes cast for the leading candidate and those cast for the petitioner or the difference between the affirmative and negative votes cast upon any referendum question is less than 10 if 1,000 or less votes are cast or not more than 0.5% of the total votes cast for the office or on the question if more than 1,000 votes are cast prior to issuance of any amended return under s. 6.221 (6) (b), the petitioner is not required to pay a fee.

1m. If the difference between the votes cast for the leading candidate and those cast for the petitioner or the difference between the affirmative and negative votes cast upon any referendum question is at least 10 if 1,000 or less votes are cast or is more than 0.5% but not more than 2% if more than 1,000 votes are cast prior to issuance of any amended return under s. 6.221 (6) (b), the petitioner shall

pay a fee of \$5 for each ward for which the petition requests a ballot recount, or \$5 for each municipality for which the petition requests a recount where no wards exist.

2. If the difference between the votes cast for the leading candidate and those cast for the petitioner or the difference between the affirmative and negative votes cast upon any referendum question is more than 2% if more than 1,000 votes are cast prior to issuance of any amended return under s. 6.221 (6) (b), the petitioner shall pay a fee equal to the actual cost of performing the recount in each ward for which the petition requests a recount, or in each municipality for which the petition request a recount where no wards exist.

3. All fees calculated or estimated under par. (ad) shall be prepaid in cash or another form of payment which is acceptable to the officer to whom they are paid. No petition for which a fee is required is valid unless the proper calculated or estimated fee is paid at the time of filing.

3m. The petitioner shall pay any balance owing toward the fee due under subd. 2. within 30 days after the clerk or body receiving the petition provides the petitioner with a written statement of the amount due. If the petitioner has overpaid the fee due under subd. 2. the clerk or body receiving the petition shall refund the amount overpaid within 30 days after the board of canvassers makes its determination in the recount.

4. The board shall deposit all moneys received by it into the account under s. 20.511 (1) (g), and shall pay the fees required for each recount to the county clerks of the counties in which the recount is to be held. The county clerk shall deposit fees received by him or her with the county treasurer. The municipal clerk shall deposit fees received by him or her with the municipal treasurer.

5. In this paragraph, the "leading candidate" includes every individual whose vote total at the time of the filing of the recount petition would entitle the individual to election or nomination to office. In an election in which more than one office of the same type is to be filled from the same territory, the number and percentage of votes cast under this paragraph shall be determined by first dividing the total number of votes cast for the office by the number of offices being filled at the election from the same territory.

(am) A person who files a petition under par. (a) may withdraw the petition. If the petitioner withdraws a petition before any board of canvassers that canvassed the original election begins its recount, the clerk or body shall refund any fee paid under par. (ag).

(ar) 1. In the event of a recount for any office, the petition shall be filed with the clerk or body with whom nomination papers are filed for that office.

2. In the event of a recount for a referendum, the petition shall be filed with the clerk of the jurisdiction in which the referendum is called, and, in the case of the state, with the board.

3. Whenever a clerk receives a valid petition and any payment under par. (ag) 3., the clerk shall thereupon notify the proper board of canvassers. Whenever the board receives a valid petition and any payment under par. (ag) 3., the board shall promptly by certified mail or other expeditious means order the proper county boards of canvassers to commence the recount. County boards of canvassers shall convene no later than 9 a.m. on the second day after receipt of an order and may adjourn for not more than one day at a time until the recount is completed in the county, except that the board may permit extension of the time for adjournment. Returns from a recount ordered by the board shall be transmitted to the office of the board as soon as possible, but

in no case later than 13 days from the date of the order of the board directing the recount. The chairperson of the board or the chairperson's designee may not make a determination in any election if a recount is pending before any county board of canvassers in that election. The chairperson of the board or the chairperson's designee need not recount actual ballots, but shall verify the returns of the county boards of canvassers in making his or her determinations.

(b) The proper board of canvassers shall reconvene no earlier than 9 a.m. on the day following delivery of notice to all candidates under sub. (2) and no later than 9 a.m. on the day following the last day for filing of a petition, or if the original canvass is subject to correction under s. 6.221 (6) (b), immediately after issuance of the amended statement and determination in the original canvass, whichever is later. The board of canvassers shall then proceed to recount the ballots in the wards or municipalities specified and to review the allegations of fact contained in the petition or petitions. The recount shall proceed for each ward or municipality as follows:

1. The board of canvassers shall first compare the poll lists and determine the number of voting electors.

2. The board of canvassers shall then examine the absentee ballot envelopes. Any defective absentee ballot envelopes shall be laid aside, properly marked and carefully preserved. The number of voters shall be reduced by the number of ballot envelopes set aside under this subdivision. An absentee ballot envelope is defective only if it is not witnessed or if it is not signed by the voter or if the certificate accompanying an absentee ballot that the voter received by facsimile transmission or electronic mail is missing.

3. The board of canvassers shall then examine the container or bag containing the ballots to be certain it has not been tampered with, opened, or opened and resealed. Any irregularities or possible tampering with the container or bag shall be noted.

4. a. When the container or bag has been checked, it shall be opened and the contents removed. The board of canvassers shall, without examination other than what is necessary to determine that each is a single ballot, count the number of ballots in the container or bag, excluding ballots removed under s. 7.51 (2) (e).

b. The board of canvassers shall then, for each opened absentee ballot envelope that was laid aside as defective under subd. 2., without inspection, randomly draw one absentee ballot from the container or bag. In differentiating absentee ballots from other ballots, the board of canvassers shall presume that a ballot initialed only by the municipal clerk, the executive director of the board of election commissioners, or a deputy clerk or secretary is an absentee ballot. If there are more defective absentee ballot envelopes than there are probable absentee ballots, all of the probable absentee ballots shall be removed from the container or bag. Additional ballots shall be removed only if the number of remaining ballots still exceeds the number of voting electors recorded under subd. 1., reduced by the number of defective envelopes set aside under subd. 2. All ballots removed shall not be counted, but shall be marked as to the reason for their removal, set aside and carefully preserved.

c. If, after completing the steps set forth in subd. 4. b., the number of ballots still exceeds the number of voters, the board of canvassers shall place all ballots face up to check for blank ballots. Any blank ballots shall be so marked, set aside and carefully preserved.

d. If, after completing the steps set forth in subd. 4. c., the

number of ballots still exceeds the number of voters reduced by the number of defective envelopes set aside under subd. 2., the board of canvassers shall place all ballots face down to check the initials. Any ballot not properly initialed by 2 inspectors or any absentee ballot not properly initialed by the municipal clerk, the executive director of the board of election commissioners, or a deputy clerk or secretary shall be temporarily set aside and the board of canvassers shall, without inspection, randomly draw from these ballots as many as are necessary to reduce the number of ballots to equal the number of voters. Any ballots removed for lack of initials shall not be counted but shall be marked, set aside and carefully preserved.

e. If, after completing the steps set forth in subd. 4. d., the number of ballots still exceeds the number of voters reduced by the number of defective envelopes set aside under subd. 2., the remaining ballots shall be returned to the container or bag and the board of canvassers shall draw a number of ballots equal to the excess number of ballots by chance and without inspection from the container or bag. These ballots shall not be counted but shall be marked as having been removed by the canvassers on recount due to an excess number of ballots, set aside and carefully preserved.

5. When the number of ballots and voters agree, or after noting that the number of voters exceeds the number of ballots, the board of 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 recount shall then begin.

5m. Except as otherwise provided in this section, the recount shall be conducted in accordance with s. 7.51.

6. In recounting the votes cast on a voting machine in which the record of the votes cast is contained in the machine, the board of canvassers shall make a record of the number of the seal, if any, the number of the protective counter or other device, if one is provided, and shall open the recording compartment of the machine, and without unlocking the machine against voting, shall recount the votes thereon. If the machine is an electronic voting machine utilizing a detachable record of votes cast, the record shall be retabulated under s. 5.90.

7. When a machine is recounted, the board of canvassers shall proceed to inspect and examine the machine showing the votes cast for each office or referendum specified in the petition, and shall make a record of the votes for that office or referendum as shown on that voting machine, which they shall certify as correct, in the presence of at least one witness.

8. If upon the recount it is found that the original canvass of the returns has been correctly made from a voting machine and that a discrepancy still remains unaccounted for, the board of canvassers shall publicly unlock the voting and counting mechanism of the machine, and shall proceed to examine and test the machine to determine the cause of the discrepancy in returns from the machine. A similar test shall be performed for electronic voting machines to ascertain whether there is any malfunction in the machine. After the completion of the examination and test, the board of canvassers shall prepare a statement giving the results of the examination and test. The statement shall be witnessed by at least one witness.

8m. Where a voting machine or electronic voting system is used, and an error in the vote total as shown on the machine or record of votes cast is clearly apparent, the board of canvassers may change the vote total as shown by the machine or system and certify or use a different total to

certify a different result than is indicated by the machine or system if there is evidence of a specific malfunction in the machine or system, if the malfunction could reasonably have caused the error, and if clear and convincing evidence exists which indicates the exact actual total number of votes cast. The burden of demonstrating that a vote total shown on a machine or record of votes cast is incorrect rests with the party seeking to change the recorded result on the basis of clear and convincing evidence.

8s. If an electronic voting system is used in which ballots are distributed to electors, and the board of canvassers makes a determination of elector intent under s. 7.50, the board of canvassers shall add to the result generated by the automatic tabulating equipment any votes counted by the board of canvassers in making its determination.

9. If upon the recount it appears that the original canvass of the returns by the election officials was incorrect, the statements and determinations of the board of canvassers shall be corrected accordingly.

10. Recounts at polling places utilizing an electronic voting system in which ballots are distributed to electors shall be performed in accordance with the procedure for recounting paper ballots insofar as applicable, except as provided in s. 5.90. Recounts at polling places utilizing electronic voting machines shall be performed in accordance with the procedure for recounting votes cast on mechanical voting machines, insofar as applicable, except as provided in s. 5.90.

11. All steps of the recount shall be performed publicly. Except as provided in subd. 12., all materials and ballots may be viewed and identified by the candidates, the person demanding the recount and their authorized representatives and counsel, but only members of the board of canvassers and tabulators assisting them may touch any of the materials or ballots. The candidates, the person demanding the recount and their authorized representatives and counsel may object to the counting of any ballot. Any errors shall be corrected.

12. Except as authorized in s. 6.47 (8), the board of canvassers shall not permit access to the name of any elector who has obtained a confidential listing under s. 6.47 (2) during the recanvass.

**(2) NOTICE TO CANDIDATES.** When the recount concerns an election for an office, the clerk or body with whom the petition is filed shall promptly prepare a copy of the petition for delivery to each opposing candidate for the same office whose name appears on the ballot. In a recount proceeding for a partisan primary, the clerk or body shall prepare a copy of the petition for delivery to each opposing candidate for the same party nomination for the same office, to each opposing candidate for the party nomination of each other party for the same office and to each independent candidate qualifying to have his or her name placed on the ballot for the succeeding election. A candidate or agent designated by a candidate may personally accept delivery of a copy of the petition. Upon such delivery, the clerk or body shall require the candidate or agent to sign a receipt therefor. If a candidate or agent does not personally accept delivery, the clerk or body shall then promptly deliver the copies of the petition to the sheriff, who shall promptly deliver the copies of the petition to each candidate at the address given on the candidate's nomination papers, without fee, in the manner provided for service of a summons in civil actions.

**(3) REPRESENTATION AND OBSERVATION.** The petitioner, all opposing candidates and interested persons shall be entitled to be present in person and by counsel to observe the proceedings.

**(4) RIGHT TO COMPLETE RECOUNT.** Whenever a recount petition for part of the wards within a jurisdiction or district, or for part of the municipalities within a district where there are no wards, is filed under this section, the opposing candidate, or any voter or other interested party including a municipality if on a referendum question, may similarly file a petition for recount in any or all of the remaining wards or municipalities in the jurisdiction or district. The petition shall be filed not later than 5 p.m. 2 days after the board of canvassers completes the first recount. The proper board of canvassers shall reconvene at 9 a.m. on the next business day following the filing of the petition and proceed to recount the ballots in all wards or municipalities specified and to otherwise review the allegations of fact contained in the petition. Any errors shall be corrected.

**(5) OATHS; MINUTES; WITNESS FEES; TABULATORS; TIMING; PUBLICATION.** (a) The board of canvassers or the chairperson of the board or the chairperson's designee shall keep complete minutes of all proceedings before the board of canvassers or the chairperson or designee. The minutes shall include a record of objections and offers of evidence. If the board of canvassers or the chairperson or chairperson's designee receives exhibits from any party, the board of canvassers or the chairperson or designee shall number and preserve the exhibits. The board of canvassers or the chairperson or chairperson's designee shall make specific findings of fact with respect to any irregularity raised in the petition or discovered during the recount. Any member of the board of canvassers or the chairperson or chairperson's designee may administer oaths, certify official acts and issue subpoenas for purposes of this section. Witness fees shall be paid by the county. In the case of proceedings before the chairperson of the board or chairperson's designee, witness fees shall be paid by the board.

(b) The board of canvassers conducting a recount may select and employ tabulators to assist it in its duties. Tabulators shall perform their duties under the direction of the board of canvassers. Only the members of the board of canvassers are competent to make any determination as to the validity of any vote tabulated. Compensation of tabulators shall be determined under s. 7.03.

(bm) Upon the completion of its proceedings, a board of canvassers shall deliver to the board one copy of the minutes of the proceedings kept under par. (a). In addition, in the case of a recount of an election for state or national office, for each candidate whose name appears on the ballot for that office under the name of a political party, the board of canvassers shall deliver one copy of the minutes to the chief officer, if any, who is named in any registration statement filed under s. 11.05 (1) by the state committee of that political party, and in the case of a recount of an election for county office, for each candidate whose name appears on the ballot for that office under the name of a political party, the board of canvassers shall deliver one copy of the minutes to the chief officer, if any, who is named in any registration statement filed under s. 11.05 (1) by the county committee of that political party.

(c) If the recount is made by a municipal or county board of canvassers and the result is required to be reported to a county board of canvassers or to the chairperson of the board or the chairperson's designee, the board of canvassers making the initial recount shall immediately certify the results to the county board of canvassers or to the chairperson of the board or designee. If a county board of canvassers receives such results, it shall then convene not later than 9 a.m. on the next business day following receipt

to examine the returns and determine the results. If the chairperson of the board or the chairperson's designee receives such results, the chairperson or designee shall publicly examine the returns and determine the results not later than 9 a.m. on the 3rd business day following receipt, but if that day is earlier than the latest day permitted for that election under s. 7.70 (3) (a), the chairperson of the board or designee may examine the returns and determine the results not later than the day specified in s. 7.70 (3) (a).

(d) Whenever publication of an original determination is required, the county or municipal clerk shall publish the recount determination in the same manner.

**(6) APPEAL TO CIRCUIT COURT.** (a) Within 5 business days after completion of the recount determination by the board of canvassers in all counties concerned, or within 5 business days after completion of the recount determination by the chairperson of the board or the chairperson's designee whenever a determination is made by the chairperson or designee, any candidate, or any elector when for a referendum, aggrieved by the recount may appeal to circuit court. The appeal shall commence by serving a written notice of appeal on the other candidates and persons who filed a written notice of appearance before each board of canvassers whose decision is appealed, or in the case of a statewide recount, before the chairperson of the board or the chairperson's designee. The appellant shall also serve notice on the board if the chairperson of the board or the chairperson's designee is responsible for determining the election. The appellant shall serve the notice by certified mail or in person. The appellant shall file the notice with the clerk of circuit court together with an undertaking and surety in the amount approved by the court, conditioned upon the payment of all costs taxed against the appellant.

(b) If an appeal is filed from a recount determination in an election which is held in more than one judicial circuit, the chief judge of the judicial administrative district in which the election is held shall consolidate all appeals relating to that election and appoint a circuit judge, who shall be a reserve judge if available, to hear the appeal. If the election is held in more than one judicial administrative district, the chief justice of the supreme court shall make the appointment.

**(7) COURT PROCEDURES.** (a) The court with whom an appeal is filed shall forthwith issue an order directing each affected county or municipal clerk or board to transmit immediately all ballots, papers and records affecting the appeal to the clerk of court or to impound and secure such ballots, papers and records, or both. The order shall be served upon each affected county or municipal clerk or board and all other candidates and persons who filed a written notice of appearance before any board of canvassers involved in the recount.

(b) The appeal shall be heard by a judge without a jury. Promptly following the filing of an appeal, the court shall hold a scheduling conference for the purpose of adopting procedures that will permit the court to determine the matter as expeditiously as possible. Within the time ordered by the court, the appellant shall file a complaint enumerating with specificity every alleged irregularity, defect, mistake or fraud committed during the recount. The appellant shall file a copy of the complaint with each person who is entitled to receive a copy of the order under par. (a). Within the time ordered by the court, the other parties to the appeal shall file an answer. Within the time ordered by the court, the parties to the appeal shall provide the court with any other information ordered by the court. At the time and place

ordered by the court, the matter shall be summarily heard and determined and costs shall be taxed as in other civil actions. Those provisions of chs. 801 to 806 which are inconsistent with a prompt and expeditious hearing do not apply to appeals under this section.

**(8) SCOPE OF REVIEW.** (a) Unless the court finds a ground for setting aside or modifying the determination of the board of canvassers or the chairperson of the board or chairperson's designee, it shall affirm the determination.

(b) The court shall separately treat disputed issues of procedure, interpretations of law, and findings of fact.

(c) The court may not receive evidence not offered to the board of canvassers or the chairperson or chairperson's designee except for evidence that was unavailable to a party exercising due diligence at the time of the recount or newly discovered evidence that could not with due diligence have been obtained during the recount, and except that the court may receive evidence not offered at an earlier time because a party was not represented by counsel in all or part of a recount proceeding. A party who fails to object or fails to offer evidence of a defect or irregularity during the recount waives the right to object or offer evidence before the court except in the case of evidence that was unavailable to a party exercising due diligence at the time of the recount or newly discovered evidence that could not with due diligence have been obtained during the recount or evidence received by the court due to unavailability of counsel during the recount.

(d) The court shall set aside or modify the determination of the board of canvassers or the chairperson of the board or chairperson's designee if it finds that the board of canvassers or the chairperson or chairperson's designee has erroneously interpreted a provision of law and a correct interpretation compels a particular action. If the determination depends on any fact found by the board of canvassers or the chairperson or chairperson's designee, the court may not substitute its judgment for that of the board of canvassers or the chairperson or designee as to the weight of the evidence on any disputed finding of fact. The court shall set aside the determination if it finds that the determination depends on any finding of fact that is not supported by substantial evidence.

**(9) APPEAL TO COURT OF APPEALS.** (a) Within 30 days after entry of the order of the circuit court, a party aggrieved by the order may appeal to the court of appeals.

(b) If an appeal is filed in respect to an election which is held in more than one court of appeals district, the chief justice of the supreme court shall consolidate all appeals relating to that election and designate one district to hear the appeal, except that if an appeal is filed in respect to an election for statewide office or a statewide referendum, the appeal shall be heard by the 4th district court of appeals.

(c) The court of appeals shall give precedence to the appeal over other matters not accorded similar precedence by law.

**(10) STANDARD FORMS AND METHODS.** The government accountability board shall prescribe standard forms and procedures for the making of recounts under this section. The procedures prescribed by the government accountability board shall require the boards of canvassers in recounts involving more than one board of canvassers to consult with the government accountability board staff prior to beginning any recount in order to ensure that uniform procedures are used, to the extent practicable, in such recounts.

**(11) EXCLUSIVE REMEDY.** This section constitutes the exclusive judicial remedy for testing the right to hold an

elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process.

**History:** 1971 c. 251; 1971 c. 304 s. 29 (2); 1971 c. 336; 1973 c. 313; 1973 c. 334 ss. 23 to 26, 57; 1975 c. 41, 422; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 200; 1979 c. 260 ss. 66 to 68, 93; 1979 c. 311, 355; 1983 a. 183; 1983 a. 484 s. 172 (3); 1983 a. 538; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1993 a. 213; 1997 a. 27; 1999 a. 49, 182; 2001 a. 16; 2003 a. 265, 321; 2005 a. 149, 451; 2007 a. 1, 96.

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

A challenge of compliance with procedures for absent voting is within the board of canvassers' jurisdiction. Absent connivance, fraud, or undue influence, substantial compliance with statutory voting procedures is sufficient. *Appeal From Recount in Election Contest*, 105 Wis. 2d 468, 313 N.W.2d 869 (Ct. App. 1981).

Sub. (8) does not require the party against whom the board rules to object to the board's determination to preserve the issue for judicial review. *Clifford v. Colby School District*, 143 Wis. 2d 581, 421 N.W.2d 852 (Ct. App. 1988).

Post-election eligibility challenges are properly brought under this section. *Logerquist v. Nasewaupée Canvassers*, 150 Wis. 2d 907, 442 N.W.2d 551 (Ct. App. 1989).

The recount statute does not violate due process or equal protection and does not deny the electorate the right to have the winning candidate hold office. The relationship of recount and quo warranto actions is discussed. *Shroble v. Prusener*, 185 Wis. 2d 103, 517 N.W.2d 169 (1994).

When the board of canvassers' actions in a recount reflected proper application of the statutes, the reviewing court's finding that the board had another option available to it was immaterial. *DeBroux v. City of Appleton Board of Canvassers*, 206 Wis. 2d 321, 557 N.W.2d 423 (Ct. App. 1996), 96-1287.

This section is the exclusive remedy for any claimed election fraud or irregularity. Generally, to successfully challenge an election, the challenger must show the probability of an altered outcome in the absence of the challenged irregularity. *Carlson v. Oconto County Board of Canvassers*, 2001 WI App 20, 240 Wis. 2d 438, 623 N.W.2d 195, 00-1788.

A party's failure to timely file an appeal under sub. (6) does not preclude the party from later intervening in another's appeal. To appeal under sub. (6) requires a party to be aggrieved. A party advocating a position that prevailed is not aggrieved. *Roth v. LaFarge School District Board of Canvassers*, 2001 WI App 221, 247 Wis. 2d 708, 634 N.W.2d 882, 01-0160.

The sub. (6) (a) requirement that a vote-recount appeal to the circuit court be served on the other candidates is fundamental. That a candidate who was not served knew about the appeal and sought and was permitted to intervene in an appeal of a recount was immaterial to the validity of that appeal. The command that "other candidates" be served with the appeal is mandatory rather than directory. *Logic v. City of South Milwaukee Board of Canvassers*, 2004 WI App 219, 277 Wis. 2d 421, 689 N.W.2d 692, 04-1642.

**11.02 Determination of filing officer.** Except where the filing of duplicate reports or statements is specifically required by law, each person, committee or group subject to s. 11.05 shall have one filing officer. Such officer shall be determined as follows:

(1) The "filing officer" for each candidate for state office and for each committee which or individual who is acting in support of or in opposition to any candidate for state office is the board.

(2) The "filing officer" for each committee which or individual who is acting in support of or in opposition to any candidates for state and local offices is the board.

(3) Except as provided in sub. (3e), the "filing officer" for each candidate for local office and for each committee which or individual who is acting in support of or in opposition to any candidate for local office, but not any candidate for state office, is the clerk of the most populous jurisdiction for which any candidate who is supported or opposed seeks office.

(3e) The "filing officer" for each candidate for municipal judge elected under s. 755.01 (4) and for each committee which or individual who is acting in support of or in opposition to such a candidate, but not any candidate for state office, is 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.

(3m) The "filing officer" for an individual who or committee which supports or opposes an effort to circulate

and file a petition to recall an individual who holds an office is the filing officer for candidates for that office.

(4) The "filing officer" for each group which or individual who is acting in support of or in opposition to any statewide referendum is the board.

(5) The "filing officer" for each group which or individual who is acting in support of or in opposition to any statewide and local referenda is the board.

(6) The "filing officer" for each group which or individual who is acting in support of or in opposition to any local referendum, but not any statewide referendum, is the clerk of the most populous jurisdiction in which any referendum being supported or opposed is conducted.

(7) If the jurisdiction under sub. (3) or (6) is a school district, the appropriate clerk is the school district clerk.

**History:** 1975 c. 93; 1983 a. 491; 1985 a. 225, 303; 1999 a. 182.

**19.84 Public notice.** (1) Public notice of all meetings of a governmental body shall be given in the following manner:

(a) As required by any other statutes; and

(b) By communication from the chief presiding officer of a governmental body or such person's designee to the public, to those news media who have filed a written request for such notice, and to the official newspaper designated under ss. 985.04, 985.05 and 985.06 or, if none exists, to a news medium likely to give notice in the area.

(2) Every public notice of a meeting of a governmental body shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof. The public notice of a meeting of a governmental body may provide for a period of public comment, during which the body may receive information from members of the public.

(3) Public notice of every meeting of a governmental body shall be given at least 24 hours prior to the commencement of such meeting unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.

(4) Separate public notice shall be given for each meeting of a governmental body at a time and date reasonably proximate to the time and date of the meeting.

(5) Departments and their subunits in any University of Wisconsin System institution or campus are exempt from the requirements of subs. (1) to (4) but shall provide meeting notice which is reasonably likely to apprise interested persons, and news media who have filed written requests for such notice.

(6) Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

**History:** 1975 c. 426; 1987 a. 305; 1993 a. 215; 1997 a. 123; 2007 a. 20. There is no requirement in this section that the notice provided be exactly correct in every detail. *State ex rel. Olson v. City of Baraboo Joint Review Board*, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01-0201.

Sub. (2) does not expressly require that the notice indicate whether a meeting will be purely deliberative or if action will be taken. The notice must alert the public of the importance of the meeting. Although a failure to expressly state whether action will be taken could be a violation, the importance of knowing whether a vote would be taken is diminished when no input from the audience is allowed or required. *State ex rel. Olson v. City of Baraboo Joint Review Board*, 2002 WI App 64, 252 Wis. 2d 628, 643 N.W.2d 796, 01-0201.

Sub. (2) sets forth a reasonableness standard for determining whether notice of a meeting is sufficient that strikes the proper balance between the public's right to information and the government's need to efficiently conduct its business. The standard requires taking into account the circumstances of the case, which includes analyzing such factors as the burden of providing more detailed notice, whether the subject is of particular public interest, and whether it involves non-routine action that the public would be unlikely to anticipate. *Buswell v. Tomah Area School District*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804, 05-2998.

Under sub. (1) (b), a written request for notice of meetings of a governmental body should be filed with the chief presiding officer or designee and a separate written request should be filed with each specific governmental body. 65 Atty. Gen. 166. The method of giving notice pursuant to sub. (1) is discussed. 65 Atty. Gen. 250.

The specificity of notice required by a governmental body is discussed. 66 Atty. Gen. 143, 195.

The requirements of notice given to newspapers under this section is discussed. 66 Atty. Gen. 230. A town board, but not an annual town meeting, is a "governmental body" within the meaning of the open meetings law. 66 Atty. Gen. 237.

News media who have filed written requests for notices of public meetings cannot be charged fees by governmental bodies for communication of the notices. 77 Atty. Gen. 312.

A newspaper is not obligated to print a notice received under sub. (1) (b), nor is governmental body obligated to pay for publication. *Martin v. Wray*, 473 F. Supp. 1131 (1979).

**19.85 Exemptions. (1)** Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer's announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over

which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the government accountability board under s. 5.05 (6a), or from any county or municipal ethics board under s. 19.59 (5).

(i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public, could adversely affect the business, its employees or former employees.

(2) No governmental body may commence a meeting, subsequently convene in closed session and thereafter reconvene again in open session within 12 hours after completion of the closed session, unless public notice of such subsequent open session was given at the same time and in the same manner as the public notice of the meeting convened prior to the closed session.

(3) Nothing in this subchapter shall be construed to authorize a governmental body to consider at a meeting in closed session the final ratification or approval of a collective bargaining agreement under subch. I, IV or V of ch. 111 which has been negotiated by such body or on its behalf.

**History:** 1975 c. 426; 1977 c. 260; 1983 a. 84; 1985 a. 316; 1987 a. 38, 305; 1989 a. 64; 1991 a. 39; 1993 a. 97, 215; 1995 a. 27; 1997 a. 39, 237, 283; 1999 a. 32; 2007 a. 1, 20.

Although a meeting was properly closed, in order to refuse inspection of records of the meeting, the custodian was required by s. 19.35 (1) (a) to state specific and sufficient public policy reasons why the public interest in nondisclosure outweighed the public's right of inspection. *Oshkosh Northwestern Co. v. Oshkosh Library Board*, 125 Wis. 2d 480, 373 N.W.2d 459 (Ct. App. 1985).

The balance between protection of reputation under sub. (1) (f) and the public interest in openness is discussed. *Wis. State Journal v. UW-Platteville*, 160 Wis. 2d 31, 465 N.W.2d 266 (Ct. App. 1990). See also *Pangman v. Stigler*, 161 Wis. 2d 828, 468 N.W.2d 784 (Ct. App. 1991).

A “case” under sub. (1) (a) contemplates an adversarial proceeding. It does not connote the mere application for and granting of a permit. *Hodge v. Turtle Lake*, 180 Wis. 2d 62, 508 N.W.2d 603 (1993).

A closed session to discuss an employee’s dismissal was properly held under sub. (1) (b) and did not require notice to the employee under sub. (1) (c) when no evidentiary hearing or final action took place in the closed session. *State ex rel. Epping v. City of Neillsville*, 218 Wis. 2d 516, 581 N.W.2d 548 (Ct. App. 1998), 97-0403. The substance of discussions held in a properly called closed session is not discoverable. *Sands v. Whitnall School District*, 2007 WI App 3, 298 Wis. 2d 534, 728 N.W.2d 15, 05-1026.

The exception under sub. (1) (e) must be strictly construed. A private entity’s desire for confidentiality does not permit a closed meeting. A governing body’s belief that secret meetings will produce cost savings does not justify closing the door to public scrutiny. Providing contingencies allowing for future public input was insufficient. Because legitimate concerns were present for portions of some of the meetings does not mean the entirety of the meetings fell within the narrow exception under sub. (1) (e). *Citizens for Responsible Development v. City of Milton*, 2007 WI App 114, 300 Wis. 2d 649, 731 N.W.2d 640, 06-0427.

Section 19.35 (1) (a) does not mandate that, when a meeting is closed under this section, all records created for or presented at the meeting are exempt from disclosure. The court must still apply the balancing test articulated in *Linzmeier*, 2002 WI 84, 254 Wis. 2d 306. *Zellner v. Cedarburg School District*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240, 06-1143.

Nothing in sub. (1) (e) suggests that a reason for going into closed session must be shared by each municipality participating in an intergovernmental body. It is not inconsistent with the open meetings law for a body to move into closed session under sub. (1) (e) when the bargaining position to be protected is not shared by every member of the body. Once a vote passes to go into closed session, the reason for requesting the vote becomes the reason of the entire body. *Herro v. Village of McFarland*, 2007 WI App 172, \_\_\_ Wis. 2d \_\_\_, \_\_\_ N.W.2d \_\_\_, 06-1929.

Boards of review cannot rely on the exemptions in sub. (1) to close any meeting in view of the explicit requirements in s. 70.47 (2m). 65 Atty. Gen. 162.

A university subunit may discuss promotions not relating to tenure, merit increases, and property purchase recommendations in closed session. 66 Atty. Gen. 60.

Neither sub. (1) (c) nor (f) authorizes a school board to make actual appointments of a new member in closed session. 74 Atty. Gen. 70.

A county board chairperson and committee are not authorized by sub. (1) (c) to meet in closed session to discuss appointments to county board committees. In appropriate circumstances, sub. (1) (f) would authorize closed sessions. 76 Atty. Gen. 276.

Sub. (1) (c) does not permit closed sessions to consider employment, compensation, promotion, or performance evaluation policies to be applied to a position of employment in general. 80 Atty. Gen. 176.

A governmental body may convene in closed session to formulate collective bargaining strategy, but sub. (3) requires that deliberations leading to ratification of a tentative agreement with a bargaining unit, as well as the ratification vote, must be held in open session. 81 Atty. Gen. 139.

“Evidentiary hearing” as used in s. 19.85 (1) (b), means a formal examination of accusations by receiving testimony or other forms of evidence that may be relevant to the dismissal, demotion, licensing, or discipline of any public employee or person covered by that section. A council that considered a mayor’s accusations against an employee in closed session without giving the employee prior notice violated the requirement of actual notice to the employee. *Campana v. City of Greenfield*, 38 F. Supp. 2d 1043 (1999).

### **GAB 3.04 Requiring provision of certain information by election-day voter registration applicants. (1)**

A qualified elector registering to vote at a polling place on election day, who has been issued a current and valid Wisconsin driver’s license, shall list his or her Wisconsin driver’s license number on the voter registration application before the registration may be accepted or processed and before the person is allowed to vote at any election in Wisconsin. A Wisconsin driver’s license that has expired, or has been suspended or revoked, is not a current and valid driver’s license.

(2) If a current and valid Wisconsin driver’s license has been issued to the registration applicant, but the registration applicant does not list the driver’s license number on the registration application, the applicant shall be allowed to vote a provisional ballot using the procedures set forth in s. 6.97, Stats. Individuals voting provisional ballots shall be given the written information required under s.6.97(1), Stats. If the person voting a provisional ballot provides his or her driver’s license number to the municipal clerk, by any

means feasible, including, but not limited to: in person, email, facsimile or telephone; not later than 4:00 p.m., on the day following the day of the election, the person’s ballot shall be counted.

(3) If a current and valid Wisconsin driver’s license has not been issued to the applicant, the applicant shall list on the registration application either the last four digits of the applicant’s social security number, or the Wisconsin department of transportation identification card number if one has been issued to the applicant. If neither a driver’s license nor a social security number has been issued to the applicant, and the applicant has not been issued a Wisconsin department of transportation identification card number, the applicant shall check the appropriate box on the application before the application may be accepted or processed and the registrant is allowed to vote.

History: CR 06-137: cr. Register March 2008 No. 627, eff. 4-1-08.

### **GAB 5.01 Ballot security. (pending legislative approval as of Aug. 22, 2008)**

(2) Within the requirements of s.7.51(3), Stats., the terms “secure” and “seal” shall be interpreted together to mean that the voted ballot container must be closed in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to the ballot container.

(3) Within the requirements of s.7.51(3) (a), Stats., a ballot container shall be considered “sealed” or “locked,” only if no voted ballot may be removed from or deposited into the container, and no other form of access to the ballots inside may be gained without leaving visible evidence of that entry or access into the container. Ballot bags shall be sealed with a tamper-evident, serialized numbered seal. The serial number shall be recorded on the signed ballot container certification (EB-101) attached to the bag. Serial numbers of the seals also shall be recorded on the Inspectors’ Statement (EB-104). Ballot boxes or containers shall have all potential openings secured in such a manner that no ballot may be removed, nor any ballot added, without visible evidence of interference or damage to that ballot container. Ballot boxes or containers shall have attached a signed ballot container certification (EB-101).

(4) A sealed ballot container shall not be considered “secured” unless it is stored in a manner in which access to the container is limited only to the clerk of the election district, board of election commissioners, or to persons authorized by the clerk or the board of election commissioners, and access to which is not available to any other person.

(5) Whenever the custodian is required to open the ballot container and unseal the ballots as part of a central count proceeding under s.5.86, Stats., board of canvass proceeding under Ch. 7, Stats., audit of electronic voting equipment after an election under s.7.08(6), Stats., recount or an appeal of a recount under s.9.01, Stats., or as part of a public records request under s.19.35, Stats., before opening the container the custodian shall record in the minutes of the proceeding whether the container is sealed and shall record the serialized number of the seal. The custodian shall make a record of the entry and of the ballot review. Upon completion of the review, the custodian shall re-secure them in the manner provided in s. 7.51, Stats., unless destruction is authorized under s. 7.23, Stats.

(7) At the time of a recount, the serial numbers on the seals of the ballot container shall be compared with the serial numbers written on the signed ballot container certification (EB-101). All containers shall be compared in a recount. The ward numbers and the results of the serial number verification shall be recorded in the minutes of the recount.