



1997 ASSEMBLY BILL 30

January 28, 1997 – Introduced by Representatives SKINDRUD, AINSWORTH, GOETSCH, GUNDERSON, HAHN, LADWIG, M. LEHMAN, NASS, OLSEN, OTTE, OWENS, PORTER, SERATTI, ZUKOWSKI and HANSON, cosponsored by Senator BUETTNER. Referred to Committee on Elections and Constitutional Law.

1 **AN ACT to amend** 7.51 (2) (e), 7.51 (2) (g), 7.51 (4) (a), 7.53 (1), 7.53 (2) (d), 7.53
2 (3) (a), 7.60 (4) (a), 7.60 (4) (c), 7.70 (3) (f), 8.11 (1) (b) and (d), (2), (2m) and (5),
3 8.21, 120.06 (6) (b), 120.06 (7) (a) and 120.06 (7) (b); and **to create** 5.02 (26), 7.08
4 (5), 7.10 (5), 7.15 (1) (L) and 120.06 (8) (dm) of the statutes; **relating to:** filing
5 of declarations of candidacy and recording of votes received by write-in
6 candidates in certain elections.

Analysis by the Legislative Reference Bureau

Currently, the name of each person who receives a vote at an election is recorded on the returns for that election. When a county or state canvass of an election is performed, the names of write-in candidates who receive a comparatively small number of votes may be omitted and the votes designated on the returns as “scattering votes”.

This bill permits any write-in candidate to file a declaration of candidacy with the appropriate filing officer or agency, in the same form as is currently provided for other candidates, no later than 5 p.m. on the day before a primary or other election at which the candidate seeks office. Under the bill, the name of any write-in candidate need not be recorded on the returns for any election unless the candidate has filed a timely declaration of candidacy for the office for which the candidate receives votes. The procedure does not apply if a write-in candidate seeks an office for which there are no candidates whose names appear on the ballot or if there

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appears on the ballot the name of a deceased candidate for the office which the write-in candidate seeks.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 5.02 (26) of the statutes is created to read:

2 5.02 (26) "Write-in candidate" means a candidate who seeks or receives votes
3 at an election for an office without qualifying to have his or her name appear on the
4 ballot at that election for the office for which the candidate seeks or receives votes.

5 **SECTION 2.** 7.08 (5) of the statutes is created to read:

6 7.08 (5) NOTICE OF WRITE-IN CANDIDATES. Whenever a write-in candidate files
7 a timely declaration of candidacy with the board, the board shall immediately notify
8 the county clerk or board of election commissioners of each county where the write-in
9 candidate seeks office of the name of the candidate and the office which the candidate
10 seeks. This subsection does not apply if the write-in candidate seeks an office for
11 which there are no candidates whose names appear on the ballot or if there appears
12 on the ballot the name of a deceased candidate for the office which the write-in
13 candidate seeks.

14 **SECTION 3.** 7.10 (5) of the statutes is created to read:

15 7.10 (5) NOTICE OF WRITE-IN CANDIDATES. Whenever a write-in candidate files
16 a timely declaration of candidacy with the county clerk or the clerk receives notice
17 from the board under s. 7.08 (5) that a write-in candidate seeks office in the county,
18 the clerk shall immediately notify the municipal clerk or board of election
19 commissioners of each municipality in the county where the write-in candidate
20 seeks office of the name of the candidate and the office which the candidate seeks.

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1 This subsection does not apply if the write-in candidate seeks an office for which
2 there are no candidates whose names appear on the ballot or if there appears on the
3 ballot the name of a deceased candidate for the office which the write-in candidate
4 seeks.

5 **SECTION 4.** 7.15 (1) (L) of the statutes is created to read:

6 7.15 (1) (L) Whenever a write-in candidate files a timely declaration of
7 candidacy with the municipal clerk or the clerk receives notice from the county clerk
8 or board of election commissioners under s. 7.10 (5) or a school district clerk under
9 s. 120.06 (8) (dm) that a write-in candidate seeks office in the municipality, notify
10 the inspectors at each polling place in the municipality where the write-in candidate
11 seeks office of the name of the candidate and the office which the candidate seeks no
12 later than 8 p.m. on election day. This paragraph does not apply if the write-in
13 candidate seeks an office for which there are no candidates whose names appear on
14 the ballot or if there appears on the ballot the name of a deceased candidate for the
15 office which the write-in candidate seeks.

16 **SECTION 5.** 7.51 (2) (e) of the statutes is amended to read:

17 7.51 (2) (e) If, after any ballots have been laid aside, the number of ballots still
18 exceeds the total number of electors recorded on the registration or poll list, the
19 inspectors shall separate the absentee ballots from the other ballots. If there is an
20 excess number of absentee ballots, the inspectors shall place the absentee ballots in
21 the ballot box and one of the inspectors shall publicly and without examination draw
22 therefrom by chance the number of ballots equal to the excess number of absentee
23 ballots. If there is an excess number of other ballots, the inspectors shall place those
24 ballots in the ballot box and one of the inspectors shall publicly and without
25 examination draw therefrom by chance the number of ballots equal to the excess

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1 number of those ballots. All ballots so removed may not be counted but shall be
2 specially marked as having been removed by the inspectors on original canvass due
3 to an excess number of ballots, set aside and preserved. When the number of ballots
4 and total shown on the poll or registration list agree, the inspectors shall return all
5 ballots to be counted to the ballot box and shall turn the ballot box in such manner
6 as to thoroughly mix the ballots. The inspectors shall then open, count and record
7 the number of votes. In recording the votes cast for an office, the inspectors may
8 indicate votes cast for a write-in candidate who does not file a timely declaration of
9 candidacy for the office for which the candidate receives votes as scattering votes,
10 unless there are no candidates whose names appear on the ballot for that office or
11 unless there appears on the ballot the name of a deceased candidate for that office.
12 When the ballots are counted, the inspectors shall separate them into piles for ballots
13 similarly voted. Objections may be made to placement of ballots in the piles at the
14 time the separation is made.

15 **SECTION 6.** 7.51 (2) (g) of the statutes is amended to read:

16 7.51 (2) (g) Immediately after the polls close, where voting machines are used,
17 the inspectors shall open the registering or recording compartments or remove the
18 record of the votes cast and shall canvass, record, announce and return on the tally
19 sheets and certificates furnished. In recording the votes cast for an office, the
20 inspectors may indicate votes cast for a write-in candidate who does not file a timely
21 declaration of candidacy for the office for which the candidate receives votes as
22 scattering votes, unless there are no candidates whose names appear on the ballot
23 for that office or unless there appears on the ballot the name of a deceased candidate.
24 In recording the votes registered on any counter which, before the opening of the
25 polls, did not register 000, the inspectors shall upon the return sheets subtract the

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1 number registered before the polls opened from the number registered when the
2 polls closed. The difference between the 2 numbers is the correct vote for the
3 candidate whose name was represented by the counter, except if the number
4 registered on the counter when the polls closed is smaller than the number registered
5 thereon when the polls opened, the number 1,000 shall be added to the number
6 registered when the polls closed, before the subtraction is made.

7 **SECTION 7.** 7.51 (4) (a) of the statutes is amended to read:

8 7.51 (4) (a) The tally sheets shall state the total number of votes cast for each
9 office and for each individual receiving votes for that office, ~~whether or not the~~
10 ~~individual's name appears on the ballot, and shall~~ except a write-in candidate who
11 has not filed a timely declaration of candidacy for the office for which the candidate
12 receives a vote, unless there are no candidates whose names appear on the ballot for
13 that office or unless there appears on the ballot the name of a deceased candidate for
14 that office. The tally sheets shall also state the vote for and against each proposition
15 voted on. Upon completion of the tally sheets, the inspectors shall immediately
16 complete inspectors' statements in duplicate. The inspectors shall state the excess
17 by which the number of ballots exceeds the number of electors voting as shown by
18 the poll or registration list, if any, and shall state the number of the last elector as
19 shown by the registration or poll lists. At least 3 inspectors, including the chief
20 inspector and at least one inspector representing each political party, shall then
21 certify to the correctness of the statements and tally sheets and sign their names.
22 All other election officials assisting with the tally shall also certify to the correctness
23 of the tally sheets. When the tally is complete, the inspectors shall publicly announce
24 the results from the statements.

25 **SECTION 8.** 7.53 (1) of the statutes is amended to read:

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1 7.53 (1) MUNICIPALITIES WITH ONE POLLING PLACE. Where the municipality
2 constitutes one ward or combines all wards to utilize a single polling place under s.
3 5.15 (6) (b), the canvass shall be conducted publicly under s. 7.51 and the inspectors
4 shall act as the municipal board of canvassers. Upon completion of the canvass and
5 ascertainment of the results by the inspectors, the clerk shall publicly read the
6 names of the persons voted for and the number of votes for each person for each
7 municipal office, except a write-in candidate who has not filed a timely declaration
8 of candidacy for the office for which the candidate receives a vote, unless there are
9 no candidates whose names appear on the ballot for that office or unless there
10 appears on the ballot the name of a deceased candidate for that office. The clerk shall
11 also publicly read the names of the persons declared by the inspectors to have won
12 nomination or election to each municipal office and the number of votes cast for and
13 against each municipal referendum question.

14 **SECTION 9.** 7.53 (2) (d) of the statutes is amended to read:

15 7.53 (2) (d) The municipal board of canvassers shall publicly canvass the
16 returns of every municipal election. The canvass shall begin within 24 hours after
17 the polls close. At the spring election, the board of canvassers shall publicly declare
18 the results on or before the 2nd Tuesday in April. The board of canvassers shall
19 prepare a statement showing the results of each election for any municipal office and
20 each municipal referendum. After each primary for municipal offices, the board of
21 canvassers shall prepare a statement certifying the names of those persons who have
22 won nomination to office. After each other election for a municipal office and each
23 municipal referendum, the board of canvassers shall prepare a determination
24 showing the names of the persons who are elected to each municipal office and the
25 results of each municipal referendum. The statement shall include the number of

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1 votes cast for each person for each municipal office, except a write-in candidate who
2 has not filed a timely declaration of candidacy for the office for which the candidate
3 receives a vote, unless there are no candidates whose names appear on the ballot for
4 that office or unless there appears on the ballot the name of a deceased candidate for
5 that office. The statement shall also include the number of votes cast for and against
6 each question submitted by the municipality. The board of canvassers shall file each
7 statement and determination in the office of the municipal clerk or board of election
8 commissioners.

9 **SECTION 10.** 7.53 (3) (a) of the statutes is amended to read:

10 7.53 (3) (a) In a common, union high or unified school district, the school district
11 clerk shall appoint 2 qualified electors of the school district prior to the date of the
12 election being canvassed who shall, with the school district clerk, constitute the
13 school district board of canvassers. If the school district clerk is a candidate at the
14 election being canvassed, the other 2 members of the board of canvassers shall
15 designate a 3rd member to serve in lieu of the clerk for that election. The canvass
16 shall begin as soon as possible after receipt of the returns, and shall continue,
17 without adjournment, until completed. The board of canvassers may return
18 defective returns to the municipal board of canvassers in the manner provided in s.
19 7.60 (3). The board of canvassers shall prepare a written statement showing the
20 numbers of votes cast for each person for each office and, except a write-in candidate
21 who has not filed a timely declaration of candidacy for the office for which the
22 candidate receives a vote, unless there are no candidates whose names appear on the
23 ballot for that office or unless there appears on the ballot for that office the name of
24 a deceased candidate. The statement shall also show the numbers of votes cast for
25 and against each question and, The board of canvassers shall also prepare a

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1 determination showing the names of the persons who are elected to the school board
2 and the results of any school district referendum. Following each primary election,
3 the board of canvassers shall prepare a statement certifying the names of the persons
4 who have won nomination to the school board. Each statement and determination
5 shall be attested by each of the canvassers. The board of canvassers shall file each
6 statement and determination in the school district office. The school district clerk
7 shall certify nominations after each primary and issue certificates of election to
8 persons who are elected to the school board after each election in the manner
9 provided in sub. (4).

10 **SECTION 11.** 7.60 (4) (a) of the statutes is amended to read:

11 7.60 (4) (a) The board of canvassers shall make separate duplicate statements
12 showing the numbers of votes cast for the offices of president and vice president; state
13 officials; U.S. senators and representatives in congress; state legislators; justice;
14 court of appeals judge; circuit judges; district attorneys; municipal judges, if they are
15 elected under s. 755.01 (4); and metropolitan sewerage commissioners, if the
16 commissioners are elected under s. 66.23 (11) (am). For partisan candidates, the
17 statements shall include the political party or principle designation, if any, next to
18 the name of each candidate. The board of canvassers shall also prepare a statement
19 showing the results of any county, technical college district or statewide referendum.
20 Each statement shall state show the total number of votes cast in the county for each
21 office; the names of all persons for whom the votes were cast, as returned; and the
22 number of votes cast for each person; and, except a write-in candidate who has not
23 filed a timely declaration of candidacy for the office for which the candidate receives
24 a vote, unless there are no candidates whose names appear on the ballot for that
25 office or unless there appears on the ballot for that office the name of a deceased

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1 candidate. The statement shall also show the number of votes cast for and against
2 any question submitted at a referendum. The board of canvassers shall use one copy
3 of the statement to report to the elections board or technical college district board and
4 shall file the other statement in the office of the county clerk or board of election
5 commissioners.

6 **SECTION 12.** 7.60 (4) (c) of the statutes is amended to read:

7 7.60 (4) (c) In preparing the statements and determinations, the board of
8 canvassers shall carefully review the tally sheets and inspectors' statement. The
9 board of canvassers may omit the ~~names of individuals whose names do not appear~~
10 ~~on the ballot and who receive a comparatively small number of votes.~~ The board of
11 canvassers shall name of any write-in candidate who has not filed a timely
12 declaration of candidacy for the office for which the candidate receives votes, and
13 designate votes received by such individuals the candidate as scattering votes,
14 unless there are no candidates whose names appear on the ballot for that office or
15 unless there appears on the ballot for that office the name of a deceased candidate.

16 The board of canvassers shall append to each statement and determination a
17 tabulation of the votes cast at each election district, ward or combination of wards
18 authorized under s. 5.15 (6) (b) in the county for each office and each individual,
19 whether the votes are canvassed or not, as well as the total canvassed votes cast for
20 each individual and each office, except where scattering votes are designated. If any
21 votes are rejected, the board of canvassers shall specify the reasons therefor.

22 **SECTION 13.** 7.70 (3) (f) of the statutes is amended to read:

23 7.70 (3) (f) The statements shall show the persons' names receiving votes, and
24 any referenda questions; the whole number of votes given to each; and an individual
25 listing by the districts or counties in which they were given. ~~The names of persons~~

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1 ~~not regularly nominated who received only a comparatively small number of votes~~
2 ~~name of any write-in candidate who has not filed a timely declaration of candidacy~~
3 ~~for the office for which the candidate receives votes~~ may be omitted and ~~their the~~
4 votes ~~cast for that candidate may be~~ designated as scattering votes, ~~unless there are~~
5 ~~no candidates whose names appear on the ballot for that office or unless there~~
6 ~~appears on the ballot for that office the name of a deceased candidate.~~

7 **SECTION 14.** 8.11 (1) (b) and (d), (2), (2m) and (5) of the statutes are amended
8 to read:

9 8.11 (1) (b) Any city may provide by charter ordinance, under s. 66.01, that
10 whenever 3 or more candidates, other than write-in candidates, file nomination
11 papers for a city office, a primary to nominate candidates for the office shall be held.

12 (d) When the number of candidates, other than write-in candidates, for any
13 city office does not exceed twice the number to be elected to the office, no primary may
14 be held for the office and the candidates' names shall appear on the ballot for the
15 ensuing election.

16 (2) MILWAUKEE COUNTY. A primary shall be held in counties having a population
17 of 500,000 or more whenever there are more than twice the number of candidates,
18 other than write-in candidates, to be elected to any judicial office within the county
19 or to the county board of supervisors from any one district.

20 (2m) FIRST CLASS CITY SCHOOL BOARD. A primary shall be held in 1st class cities
21 whenever there are more than 2 candidates, other than write-in candidates, for
22 member of the board of school directors at-large or from any election district in any
23 year.

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1 **(5) COUNTY SUPERVISORS.** A primary shall be held in an election for county board
2 supervisor whenever 3 or more candidates, other than write-in candidates, file
3 nomination papers.

4 **SECTION 15.** 8.21 of the statutes is amended to read:

5 **8.21 Declaration of candidacy.** Each candidate, except a write-in candidate
6 or a candidate for presidential elector under s. 8.20 (2) (d), shall file a declaration of
7 candidacy, no later than the latest time provided for filing nomination papers under
8 s. 8.10 (2) (a), 8.15 (1), 8.17 (2), 8.20 (8) (a) or 8.50 (3) (a), or the time provided under
9 s. 8.16 (2) or 8.35 (2) (c). A write-in candidate may file a declaration of candidacy no
10 later than 5 p.m. before the day of the primary or other election at which the
11 candidate seeks office. A candidate shall file the declaration with the officer or
12 agency with which nomination papers are filed for the office which the candidate
13 seeks, or if nomination papers are not required, with the clerk or board of election
14 commissioners of the jurisdiction in which the candidate seeks office. The
15 declaration shall be sworn to before any officer authorized to administer oaths. The
16 declaration shall contain the name of the candidate in the form specified under s.
17 8.10 (2) (b) for candidates for nonpartisan office or s. 8.15 (5) (a) or 8.20 (2) (a) for
18 candidates for partisan office, and shall state that the signer is a candidate for a
19 named office, that he or she meets or will at the time he or she assumes office meet
20 applicable age, citizenship, residency or voting qualification requirements, if any,
21 prescribed by the constitutions and laws of the United States and of this state, and
22 that he or she will otherwise qualify for office if nominated and elected. The Except
23 in the case of a write-in candidate, the declaration shall include the candidate's
24 name in the form in which it will appear on the ballot. Each candidate for state and
25 local office shall include in the declaration a statement that he or she has not been

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1 convicted of any infamous crime for which he or she has not been pardoned and a list
2 of all felony convictions for which he or she has not been pardoned. In addition, each
3 candidate for state or local office shall include in the declaration a statement that
4 discloses his or her municipality of residence for voting purposes, and the street and
5 number, if any, on which the candidate resides. The declaration is valid with or
6 without the seal of the officer who administers the oath. A candidate for state or local
7 office shall file an amended declaration under oath with the same officer or agency
8 if any information contained in the declaration changes at any time after the original
9 declaration is filed and before the candidate assumes office or is defeated for election
10 or nomination.

11 **SECTION 16.** 120.06 (6) (b) of the statutes is amended to read:

12 120.06 (6) (b) No later than the first Tuesday in December prior to the spring
13 election, the school district clerk shall publish a type A notice of the school district
14 election under s. 10.01 (2) (a). Except as authorized in this paragraph, no later than
15 5 p.m. on the first Tuesday in January prior to the spring election, or on the next day
16 if Tuesday is a holiday, any qualified elector of the school district, other than a
17 write-in candidate as defined in s. 5.02 (26), may file a sworn declaration of
18 candidacy with the school district clerk in the form provided in s. 8.21 at the place
19 specified in the notice. A write-in candidate may file a declaration of candidacy no
20 later than 5 p.m. before the day of the primary or other election at which the
21 candidate seeks office. If the school district contains territory lying within a 2nd
22 class city, or if the school board or annual meeting requires nomination papers under
23 par. (a), any qualified elector of the school district who desires to be a candidate, other
24 than a write-in candidate, shall in addition file nomination papers in the form
25 prescribed under s. 8.10 (2) and (3) with the school district clerk at the place specified

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1 in the notice. If an incumbent fails to file a declaration of candidacy, and nomination
2 papers, where required, within the time prescribed by this paragraph, all candidates
3 for the office held by the incumbent, other than the incumbent, may file a declaration
4 of candidacy and nomination papers, where required, no later than 72 hours after the
5 latest time prescribed in this paragraph. No extension of the time for filing a
6 declaration of candidacy or nomination papers applies if the incumbent files written
7 notification with the school district clerk, no later than 5 p.m. on the 2nd Friday
8 preceding the latest time prescribed in this paragraph for filing declarations of
9 candidacy, that the incumbent is not a candidate for reelection to his or her office, and
10 the incumbent does not file a declaration of candidacy for that office within the time
11 prescribed in this paragraph. In the case of a 3-member school board, the qualified
12 elector shall state in his or her declaration of candidacy and on the face of his or her
13 nomination papers, if any, the office for which the elector is a candidate. In the case
14 of an apportioned or numbered school board, the qualified elector shall state in his
15 or her declaration of candidacy and on the face of his or her nomination papers, if any,
16 the apportioned area or numbered seat for which the elector is a candidate. If a
17 candidate has not filed a registration statement under s. 11.05 by the time he or she
18 files a declaration of candidacy, the candidate shall file the statement with the
19 declaration. A candidate shall file an amended declaration under oath with the
20 school district clerk in the event of a change in any information provided in the
21 declaration as provided in s. 8.21.

22 **SECTION 17.** 120.06 (7) (a) of the statutes is amended to read:

23 120.06 (7) (a) No later than 5 p.m. on the 2nd Tuesday in January, the school
24 district clerk shall verify the declarations of candidacy and certify the names of
25 candidates who have filed valid nomination papers, where required, and who qualify

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1 for office. In making verifications or certifications, the school district clerk shall
2 designate the form of each candidate's name to appear on the ballot in the manner
3 prescribed in s. 7.08 (2) (a). Once filed, a declaration of candidacy or nomination
4 papers may not be withdrawn. This paragraph does not apply to write-in
5 candidates, as defined in s. 5.02 (26).

6 **SECTION 18.** 120.06 (7) (b) of the statutes is amended to read:

7 120.06 (7) (b) The school board shall require a primary election if there are
8 more than 2 candidates, other than write-in candidates, as defined in s. 5.02 (26),
9 for any seat on a 3-member board or more than twice as many candidates as there
10 are members to be elected to an unnumbered school board of more than 3 members.
11 In school districts in which a plan of apportionment of school board members under
12 s. 120.02 (2) or a plan for election of school board members to numbered seats has
13 been adopted, the school board shall require a primary election for particular
14 apportioned areas for which there are more than twice as many candidates, other
15 than write-in candidates, as there are members to be elected and for any numbered
16 seat for which there are more than 2 candidates. When there is a primary election
17 it shall be held in conjunction with the spring primary.

18 **SECTION 19.** 120.06 (8) (dm) of the statutes is created to read:

19 120.06 (8) (dm) Whenever a write-in candidate, as defined in s. 5.02 (26), files
20 a timely declaration of candidacy with the clerk, the clerk shall immediately notify
21 the municipal clerk or board of election commissioners of each municipality in the
22 school district of the name of the candidate and the office which the candidate seeks,
23 unless there are no candidates whose names appear on the ballot for that office or
24 unless there appears on the ballot the name of a deceased candidate for that office.

25

(END)