

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4306/1dn
JTK/RJM:cmh:hmh

January 26, 2000

Representative Freese:

1. With a few specific exceptions, this draft provides for the act resulting from its enactment to take effect on the day after publication. Because the changes involved in this draft are so extensive and it would be confusing and disruptive to apply some of them in the middle of an election period, it may be advisable to consider a delayed effective date for the entire draft. In the past, we have used an effective date of July 1 of the even-numbered year for similar legislation (in this case, July 1, 2000).

2. The text of s. 6.79, stats., as amended by this draft, permits electronic data entry of poll lists but requires any data entry system to be approved by the board. You may wish to require any data entry system to meet the same security standard that is required for recording of votes by electronic voting systems under s. 5.91 (11), stats., in order to preserve entered data in the event of a power outage, evacuation or malfunction.

There is one other problem we can foresee if the officials are able to generate updated poll lists periodically from a printer. There may develop confusion over which list is the final list. The final list is used in the canvassing process and use of an incorrect list will likely cause valid votes to be invalidated. Either preliminary lists should not be generated or each list should prominently be dated and timed or labeled "preliminary" or "final" by the computer. (The elections board may be able to handle this problem administratively.)

3. In s. 6.87, stats., do you want the witness who authenticates the voting of an absentee ballot to be an adult? This is not required for the two witnesses whose certification may be used currently, but it is required for authentication of the ballots of military electors under s. 6.22 (2) (b), stats.

4. This draft revises the text of ss. 6.88 (1), (2) and (3) (b) and 9.01 (1) (b) 2., stats., to clarify the procedure for counting absentee ballots that are voted by facsimile transmission or electronic mail in accordance with what we believe to be the committee's intent.

5. The text of s. 7.60 (2), stats., as amended by this draft, provides for the county clerk, except in counties where there is a board of election commissioners, to designate a deputy clerk to perform the clerk's duties if the clerk's office is vacant, if the clerk cannot perform his or her duties or if the clerk is a candidate. It would be preferable to ensure that the designation is made in advance, to become effective in the event of a vacancy, disability or candidacy.

6. Proposed s. 8.37, stats., which requires the legislature to submit referenda questions no later than 42 days prior to the election at which they will appear on the ballot, creates a rule of procedure under article IV, section 8, of the Wisconsin Constitution. The supreme court has held that the remedy for noncompliance with this type of provision lies exclusively within the legislative branch. See *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 363-369 (1983). In other words, while this type of provision may be effective to govern internal legislative procedure, the courts will not enforce this type of provision and it does not affect the validity of any enactment resulting from a procedure that may be viewed as contravening the provision.

In addition, the related changes that propose to require a minimum of 42 days between the filing of a petition for a referendum with a governmental officer or agency and the date that the referendum is held may be problematic because it can sometimes take a while to verify the legal sufficiency of a petition and election officials cannot proceed with publication of notices and preparation and distribution of absentee ballots until it is determined whether the petition is valid.

7. Currently, s. 197.04 (1) (b), stats., allows a municipality to place a referendum regarding the municipal acquisition of a utility on the general or regular municipal election ballot only if the general election is held 30 to 35 days after the filing of the referendum petition. Otherwise, the municipality must call a special election. This draft changes this window to 42 to 47 days after the filing of the referendum petition. You may want to amend this provision to widen this 5-day window in order to allow a greater opportunity to utilize the general election or a regular municipal election to hold such a referendum.

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