

CHAPTER 5

ELECTIONS — GENERAL PROVISIONS;
BALLOTS AND VOTING SYSTEMS

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SUBCHAPTER I

GENERAL PROVISIONS

5.01 Scope. (1) CONSTRUCTION OF CHS. 5 TO 12. Chapters 5 to 12 shall 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 its provisions.

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

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

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

(4) TIE VOTE. (a) If 2 or more candidates for the same office receive the greatest, but equal number of votes, the winner shall be chosen by lot in the presence of the board of canvassers

charged with the responsibility to determine the election, except as provided in s. 8.17 (4) (b).

(b) If, in a primary, 2 or more candidates receive an equal but not the greatest number of votes so that only one of those candidates with equal votes may advance to the final election, the choice shall similarly be made by drawing lots.

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

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

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

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

History: 1979 c 89; 1983 a 484.

Where there is substantial compliance with, but a deviation from a provision in an election statute, thereby giving rise to the question of whether the requirement is directory or mandatory, the supreme court in a long line of cases has consistently construed the provision as directory in keeping with (1), which requires that the election laws shall be so construed as to give effect to the will of the electors. *Lanser v Koconis*, 62 W (2d) 86, 214 NW (2d) 425.

Where 40% of registered voters were denied ballots in election to remove county seat, election was set aside even though outcome probably was not affected. *McNally v Tollerander*, 100 W (2d) 490, 302 NW (2d) 440 (1981).

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

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

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

(1m) "Ballot label" means the page, card or material containing the names of offices and candidates or referenda to be voted on, which is placed on a voting device. The term does not include a paster applied to ballots to fill a vacancy in a nomination.

(1q) "Block" means an area bounded by 4 streets or some other physical feature, which is the smallest geographic area used by the U.S. bureau of the census for data collection and tabulation.

(1s) "Board" means the elections board.

(2) "County clerk" includes the executive secretary of the county board of election commissioners and their authorized representatives.

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

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

(4) "Election" means every public primary and election.

(4e) In this chapter, "election official" means any person charged with any duties relating to the conduct of elections under chs. 5 to 12.

(4m) "Electronic voting system" means a system in which votes are recorded on ballots, and the votes are subsequently counted and tabulated by automatic tabulating equipment.

The term also includes a voting machine on which votes are recorded and tabulated by electronic means.

(4s) "Enumeration district" means the basic statistical area used by the U.S. bureau of the census for data collection and tabulation in areas where the U.S. bureau of the census does not prepare block statistics.

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

(6) "Governing body" means the city council, town board or village board, and also includes the municipal board of election commissioners insofar as the powers are given to them.

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

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

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

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

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

(11) "Municipality" means city, town or village.

(12) "National office" means the offices of president and vice president of the United States, U.S. senator and U.S. congressman.

(13) "Political party" or "party" means a state committee registered under s. 11.05 organized exclusively for political purposes, recognized by the national organization of the party, if any, under whose name candidates appear on a ballot at any election, and all county, congressional, legislative, local and other affiliated committees authorized to operate under the same name. For purposes of ch. 11, the term

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does not include a legislative campaign committee created under s. 11.265.

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

(15) "Polling place" means the actual location wherein the elector's vote is cast.

(16) "Primary" means a primary election.

(17) "Registration list" means the list of electors who are properly registered to vote in municipalities in which registration is required.

(18) "September primary" means the primary held the 2nd Tuesday in September to nominate candidates to be voted for at the general election, and to determine which candidates for state office may participate in the Wisconsin election campaign fund.

(19) "Special election" means any election, other than those described in subs. (5), (18), (21) and (22), to fill vacancies or for other designated purposes.

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

(21) "Spring election" means the election held on the first Tuesday in April to elect judicial, educational and municipal officers, nonpartisan county officers, sewerage commissioners and to express preferences for the person to be the presidential candidate for each party.

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

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

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

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

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

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

History: 1971 c. 211; 1971 c. 304 ss. 2, 29 (2); 1973 c. 280, 334; 1975 c. 93; 1977 c. 107, 187, 394; 1977 c. 427 ss. 3 to 14; 1977 c. 449; 1979 c. 32, 89, 221; 1979 c. 260 ss. 1m, 73 to 75; 1979 c. 311, 328; 1981 c. 4, 391; 1983 a. 484 ss. 5, 5c, 124m, 128.

5.05 Elections board; powers and duties. (1)

GENERAL AUTHORITY. The elections board shall have the responsibility for the administration of chs. 5 to 12 and other laws relating to elections and election campaigns. Pursuant to such responsibility, the board may:

(a) Employ an executive secretary outside the classified service and employ legal counsel.

(b) In the discharge of its duties and upon notice to the party or parties being investigated, subpoena and bring before it any person in the state and require the production of any papers, books or other records relevant to an investigation. A circuit court may by order permit the inspection and copying of the accounts and the depositor's and loan records at any financial institution as defined in s. 705.01 (3) doing business in the state to obtain evidence of any violation of ch. 11 upon showing by the board of probable cause to believe there is a violation and that such accounts and records may have a substantial relation to the violation. In the discharge of its duties, the board may cause the deposition of witnesses to be taken in the manner prescribed for taking depositions in civil actions in circuit court.

(c) Bring civil actions to require forfeitures for any violation of ch. 11 under s. 11.60. Forfeiture actions brought by the board may concern only violations with respect to reports or statements required by law to be filed with it, and other violations arising under elections for state office or statewide referenda. The board may compromise and settle any civil action or potential action brought or authorized to be brought by it under ch. 11 which, in the opinion of the board, constitutes a minor violation, a violation caused by excusable neglect, or which for other good cause shown, should not in the public interest be prosecuted under such chapter. Notwithstanding s. 778.06, an action or proposed action authorized under this paragraph may be settled for such sum as may be agreed between the parties. Forfeiture actions brought by the board shall be brought in the circuit court for the county wherein the violation is alleged to occur.

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

(e) Delegate to its executive secretary the authority to issue a subpoena under par. (b), apply for a search warrant under par. (b), commence an action under par. (d), intervene in an action or proceeding under sub. (9) or issue an order under s. 5.06, subject to such limitations as the board deems appropriate.

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

(2) **AUDITING.** In addition to the facial examination of reports and statements required under s. 11.21 (13), the board shall conduct an audit of reports and statements which are required to be filed with it to determine whether violations of ch. 11 have occurred. The board may examine records relating to matters required to be treated in such reports and statements. The board shall make official note in the file of a candidate, committee, group or individual under ch. 11 of any error or other discrepancy which the board discovers and shall inform the person submitting the report or statement.

(3) **INVESTIGATIONS.** (a) The board shall upon complaint by any person or on its own motion investigate violations of the elections laws and shall notify the district attorney of the proper county, the attorney general or the governor where appropriate under s. 11.60 (4) or 11.61 (2) of any facts within its knowledge or evidence in its possession which may be grounds for civil action or criminal prosecution.

(b) In any case in which the board refers information relating to an apparent violation of this section, the district attorney, attorney general, or any special counsel appointed under s. 14.11 (2) shall respond by report to the board with respect to any action taken regarding such apparent violation. The report shall be transmitted no later than 40 days after the date of the referral. If the matter is not disposed of during such period, the board shall receive a further report at the close of every 30-day period until the time of final disposition.

(c) No investigation is required of any petition or complaint which is not verified. The board may summarily dismiss any complaint which it finds to be without merit.

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

(5) **BIENNIAL REPORT.** Notwithstanding s. 15.04 (1) (d), the board shall file its biennial report required by that paragraph on or before June 30 of each odd-numbered year, covering the biennium ending on the previous December 31. The board shall include any information compiled under s. 11.21 (7) in such report.

(6) **FORMAL OPINIONS.** Any interested person may make written request to the board to issue a formal opinion with respect to the person's authority or responsibilities under chs. 5 to 12. The board shall within 15 days advise the person requesting an opinion whether or not a formal opinion will be issued. If a formal opinion will be issued, it shall be issued within 30 days of the request. No person acting in good faith upon a formal opinion issued to the person by the board shall be subject to civil or criminal prosecution for so acting, if the material facts are as stated in the opinion request. Nothing in this subsection requires the issuance of an opinion by the board, nor precludes it from issuing an opinion or ruling in any other manner.

(7) **ADMINISTRATIVE MEETINGS.** The board shall conduct regular information and training meetings at various locations in the state for county and municipal clerks and election officials. Such meetings shall be designed to explain the election laws and the forms and rules of the board, to promote uniform procedures and to assure that clerks and other officials are made aware of the integrity and importance of the vote of each citizen.

(9) **STANDING.** The board has standing to commence or intervene in an action or proceeding for the purpose of enforcing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration. If the board delegates authority to the executive secretary under sub. (1) (e) to act in its stead, the executive secretary has standing to commence or intervene in such an action or proceeding.

History: 1973 c. 334; 1975 c. 85, 93, 199; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418, 427, 447; 1979 c. 32 s. 92 (8); 1979 c. 89, 154, 328; 1983 a. 27, 484, 524, 538.

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 or ballot preparation 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 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.

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

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

(4) The board may, on its own motion, investigate and determine whether any election official, with respect to any matter concerning nominations, qualifications of candidates or ballot preparation, has failed to comply with the law or abused the discretion vested in him or her by law or proposes to do so.

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

(6) The board may, after such investigation as it deems appropriate, summarily decide the matter before it and, by order, require any election official to conform his or her conduct to the law, restrain an official from taking any action inconsistent with the law or correct any action or decision inconsistent with the law.

The board shall immediately transmit a copy of the order to the official. An order issued under this subsection is effective immediately or at such later time as may be specified in the order.

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

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

(9) The court may not conduct a de novo proceeding with respect to any findings of fact or factual matters upon which the board has made a determination, or could have made a determination if the parties had properly presented the disputed matters to the board for its consideration. The court shall summarily hear and determine all contested issues of law and shall affirm, reverse or modify the determination of the board, according due weight to the experience, technical competence and specialized knowledge of the board, pursuant to the applicable standards for review of agency decisions under s. 227.20.

History: 1983 a. 484.

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

History: 1973 c. 334; 1983 a. 484 s. 136m.

5.08 Petition for enforcement. Any elector may file a verified petition alleging such facts as are within his or her knowledge to indicate that an election official has failed or is failing to comply with any law regulating the conduct of elections or election campaigns or proposes to act in a manner inconsistent with such a law, and requesting that an action be commenced for injunctive relief, a writ of mandamus or prohibition or other such legal or equitable relief as may be appropriate to compel compliance with the law. The petition shall be filed with the district attorney of the county where the violation or proposed action inconsistent with this chapter occurs or is proposed to occur. The district attorney may then commence the action or dismiss the petition. If the district

attorney declines to act upon the petition or if the district attorney fails to act upon the petition within 15 days of the date of filing, the petitioner may file the same petition with the attorney general, who may then commence the action.

History: 1983 a 484

5.085 Elections advisory council. (1) The elections advisory council shall promote communication and cooperation between local election officials and the board and shall attempt to assure uniform, equitable and efficient procedures in the administration of the law, consistent with legislative purpose.

(2) The council shall recommend material to be covered in administrative meetings conducted by the board under s. 5.05 (7) and make suggestions for improvements in such meetings.

(3) Before directing the printing, publication or major revision of any form, manual, bulletin or other publication, the board shall refer the matter to the council for comments and suggestions.

(4) The council shall recommend technical revisions and procedural improvements in the law and its administration for the consideration of the board. Any recommendations which require legislative action shall, upon approval by the board, be forwarded to the legislature for consideration.

History: 1975 c. 85; 1977 c. 427; 1983 a. 484 s. 7s.

5.09 Certification of documents. Whenever the board is authorized or required to make a certification of any document in the custody of the board, and the authority to make such certification is lawfully delegated to the executive secretary, the executive secretary may, personally or through an employe authorized by the secretary, affix his or her signature by means of a stamp, machine impression, reproduction print or similar process. This section does not apply to certificates of election.

History: 1977 c. 427

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

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

5.15 Division of municipalities into wards.

(1) (a) Every city, village or town in this state shall by its common council or village or town board, respectively, be divided into wards as provided in this section, except as authorized in sub. (2). The boundaries of the wards established under this section, and the number assigned to each ward, are intended to be as permanent as possible, and to this end each ward shall when created contain a population at a convenient point within the applicable population range under sub. (2), with due consideration for the known trends of population increase or decrease within that part of the municipality in which the ward is located. Once established, the boundaries of each ward shall remain unchanged until a further decennial federal census of population indicates that the population of a ward is then above or below the applicable population range. If the population of a ward has increased above the maximum of its population range, such ward shall be divided into 2 or more wards in compliance with sub. (2). If the population of a ward has decreased below the minimum of its population range such ward shall, if possible, be combined with an adjoining ward, or the underpopulated ward and one adjoining ward shall be combined and together subdivided into 2 or more wards in compliance with sub. (2). For the purpose of sub. (2), "population" means the population by enumeration district or block established in the most recent federal decennial census of population.

(b) Except as authorized in sub. (2) (a), within 60 days after the receipt of a tentative supervisory district plan and written statement, if any, from the county board of each county in which a municipality is located, the governing body of the municipality shall adjust its wards according to the schedule shown in sub. (2). Except as authorized in sub. (2), each ward shall consist of whole enumeration districts or, where block statistics are available for blocks, of whole blocks. To suit the convenience of the voters residing therein each ward shall, as far as practicable, be kept compact and observe the community of interest of existing neighborhoods and other settlements. The division of a municipality into wards shall be made by the common council for each city, by the village board for each village, and by the town board for each town. In dividing the municipality into wards, the governing body shall give consideration to the tentative plan submitted by the county board of the county or counties in which it is located under s. 59.03 (2) (a) or (3) (b) 1. Passage of a division ordinance or resolution requires the affirmative vote of a majority of the members of the respective governing body.

(c) The wards established by municipal governing bodies under this section on the basis of the published results of the 1980 census of population shall govern the adjustment of supervisory districts under s. 59.03 (2) (a) and (3) (b) and of aldermanic districts under s. 62.08 (1) for the purpose of local elections beginning on January 1, 1982, and thereafter unless revised under this section on the basis of the results of the 1990 census of population or unless adjusted, as a matter of statewide concern, in the enactment of legislative districts under article IV, section 3, of the constitution on the basis of the most recent federal decennial census of population.

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

(2) (a) No city electing its common council at large in which the total population is less than 1,000, and no village or town in which the total population is less than 1,000 is required to be divided into wards under this section, but any such city, village or town may divide itself into wards if the creation of wards facilitates the administration of elections and for this purpose may estimate resident population according to the best evidence as provided in par. (b) 7. No village or town located in a county having only one town is required to be divided into wards under this section.

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

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

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

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

5. Any city electing the members of its common council from aldermanic districts and whose total population according to the most recent federal decennial census of population is reported as a single enumeration district shall divide itself into wards of substantially equal population and such wards shall each constitute an aldermanic district.

6. Any other city electing the members of its common council from aldermanic districts for which the population data according to the most recent federal census of population is not reported by block statistics shall divide the enumeration districts wholly or partially contained within the city into wards that will enable

the creation of aldermanic districts that are substantially equal in population.

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

(c) If the population of a block exceeds the maximum population for a ward otherwise specified in this subsection, such block shall be constituted a ward by itself. If the population of an enumeration district exceeds the maximum population for a ward specified in this subsection, the enumeration district may be constituted a ward by itself, unless otherwise required in par. (d).

(d) Every municipality shall make a good faith effort to accommodate the tentative plan submitted by the county or counties in which it is located under s. 59.03 (2) (a) or (3) (b) 1, and shall divide itself into wards in such a manner that will permit the creation of county supervisory districts in accordance with the population requirements for the plan specified in s. 59.03 (2) (a) or (3) (b) 1. If the use of whole enumeration districts prevents the establishment of county supervisory districts in accordance with the tentative plan, the municipality shall cooperate with the county or counties in which it is located to divide itself into wards which will permit the creation of supervisory districts in accordance with the population requirements for the plan specified in s. 59.03 (2) (a) or (3) (b) 1. Each division of an enumeration district shall be based on the best evidence available, as defined in par. (b) 7.

(e) Any city with population statistics reported by blocks shall divide itself into wards that will enable the creation of aldermanic districts that are substantially equal in population and that will assist the county in creating supervisory districts in accordance with the population requirements for the plan specified in s. 59.03 (2) (a) or (3) (b).

(f) Notwithstanding par. (b), any city, village or town may establish a ward below the prescribed minimum population for the applicable range, and for this purpose, may estimate resident population according to the best evidence as authorized in par. (b) 7, whenever the proposed ward contains solely:

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

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

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

4. New territory annexed by a city or village after the adoption of a decennial ward plan.

5. Any ward established under par. (a), (b) 5 or 6 or (d).

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

(4) (a) The division ordinance or resolution shall number all wards in the municipality in whole numbers in consecutive order, beginning with the number one, shall designate the polling place for each ward, and shall describe the boundaries of each ward consistent with the conventions set forth in s. 4.003.

(b) The resolution or ordinance shall be filed with the proper municipal clerk, who shall transmit a copy to the county clerk within 5 days.

(5) When a town is divided into wards, the annual town meeting and special town elections shall be held at the first ward.

(6) (a) Following any municipality-wide special federal census of population, the governing body of the municipality in which the special census was held may adjust the ward boundaries, but no ward line adjustment may cross the boundary of an assembly district. The governing body shall file a copy of the ordinance or resolution in compliance with this section.

(b) No later than 60 days before an election the governing body of any municipality may by

resolution combine 2 or more wards for voting purposes to facilitate using a common polling place. Except as otherwise authorized under this paragraph, every municipality having a population of 35,000 or more shall maintain separate returns for each ward so combined. In municipalities having a population of less than 35,000, the governing body may provide in the resolution that returns shall be maintained only for each group of combined wards at any election. In municipalities having a population as shown in the 1980 federal decennial census of at least 87,000 but not more than 150,000, the governing body may provide in a resolution adopted prior to 1992 that not more than 2 wards shall use common ballot boxes and ballots or voting machines and that returns shall be maintained only for each group of combined wards at any election held prior to 1992, but not more than one such resolution may be adopted. Whenever a governing body provides for common ballot boxes and ballots or voting machines, separate returns shall be maintained for each separate ballot required under ss. 5.58 to 5.64. A copy of the resolution shall be filed in the same manner as provided in sub. (4) (b). In municipalities having a population of less than 35,000, the resolution shall remain in effect for each election until modified or rescinded, or until a new division is made under this section.

(7) When part of a town is annexed to a city or village, the town board, without regard to the time provisions of sub. (1) (b), may adjust the remaining wards in that town, and shall file a copy of the ordinance or resolution, in compliance with this section.

History: 1971 c. 304 ss. 3 to 5, 29 (2); 1977 c. 26, 418, 427, 449; 1979 c. 260; 1981 c. 4 ss. 2 to 10, 18; 1981 c. 314; 1983 a. 29, 192, 442; 1983 a. 484 ss. 8e, 174; 1983 a. 538

City and county apportionment discussed. *City of Janesville v. Rock County*, 107 W (2d) 187, 319 NW (2d) 891 (Ct. App. 1982).

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

5.18 Compulsory division into wards. (1)

When division into wards becomes imperative under s. 5.15 and the governing body obliged to act fails or refuses to do so, the county in which the municipality is located or any elector of the municipality may apply to the proper circuit court or its presiding judge for an order compelling division. After reasonable notice to the governing body proceeded against, the court or judge may order division when it appears necessary.

(2) Failure to comply with the order in the specified time, unless stayed or superseded, may be punished as contempt of court.

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

History: 1971 c. 304 s. 29 (2); 1979 c. 257; 1981 c. 4

5.25 Polling places. All elections under chs. 5 to 12 shall be held at the polling places provided in this section. So far as practicable, the places chosen shall be public buildings.

(1) In 1st class cities, polling shall be at the places established by the board of election commissioners at any public schools and other public buildings which shall be made available without charge and at any fully or partially tax exempt nonsectarian private buildings offered without charge. In all other cities and in villages and towns, polling shall be at the places ordered by the governing body, at least 30 days before the election.

(3) Wherever the inspectors do not receive ballots at the door to a polling place under s. 6.82 (1), the polling place shall have at least one entrance which is accessible to persons in wheelchairs.

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

History: 1975 c. 275; 1977 c. 427; 1979 c. 89; 1983 a. 532

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

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

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

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

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

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

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

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

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

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

(b) At each polling place in the state where an electronic voting system is utilized at a partisan primary election incorporating a ballot upon which electors may mark, punch or label votes for candidates of more than one recognized political party or for candidates of a recognized political party and independent candidates, the municipal clerk or board of election commissioners shall prominently post a sign in the form prescribed by the board warning electors in substance that on any ballot with votes cast for candidates of more than one recognized political party or any ballot with votes cast for candidates of a recognized political party and independent candidates, no votes cast for any candidates for partisan office will be counted.

History: 1975 c. 85, 199; 1977 c. 427; 1979 c. 260, 311, 355; 1981 c. 4, 20; 1983 a. 484

5.37 Voting machine requirements. (1) Voting machines shall give every elector a reasonable opportunity to vote for any person for any office and on any proposition he is entitled to vote on, assure privacy to the elector so no one will know how he is voting or has voted, preclude the electors from voting for persons or propositions upon which they are not entitled to vote and from voting more than once for the same office or on the same proposition. Voting machines shall be constructed to lock so they cannot be manipulated, tampered with, or show the number of votes registered for any candidate or proposition while voting is in progress.

The machines shall provide a method for electors to vote a straight party ticket, shall permit voting a split ticket and shall record each vote cast.

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

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

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

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

History: 1971 c. 304 s. 29 (1), (2); 1977 c. 107, 427; 1981 c. 314; 1983 a. 484

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5.40 Voting systems shall be used. (1) Except as permitted in sub. (3) or s. 7.15 (6), the governing body of every municipality with a population of 10,000 or more shall require the use of voting machines or electronic voting systems in every ward in the municipality at every election. Any other governing body may adopt and purchase voting machines or electronic voting systems for use in any ward in the municipality at any election.

(2) Only voting machines complying with s. 5.37 shall be used in any election in this state.

(3) Notwithstanding sub. (1), the use of voting machines or electronic voting systems is optional with the municipality for any territory which is annexed to a city or village across the boundary of a legislative district if the population residing in the territory so annexed does not exceed the minimum population for a ward in that municipality as specified under s. 5.15 (2).

History: 1971 c. 304 s. 29 (2); 1973 c. 112; 1977 c. 427; 1979 c. 235, 311, 355; 1983 a. 484

SUBCHAPTER II

BALLOT FORM

5.51 General provisions. (1) The type face used on all paper ballots shall be easy to read, and the type size may be no smaller than 8 point.

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

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

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

(5) Sample ballots shall be printed on a different color paper than the official ballots, and need not have the indorsement and certificate.

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

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

History: 1979 c. 260, 311; 1981 c. 377; 1983 a. 484 s. 174

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

(2) Where the provisions require separate ballots, the names or questions shall be placed in separate columns or rows upon the machines so they are voted on separately, except as otherwise provided for referenda under s. 5.64 (2) (c).

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

5.54 Notice to electors. Every ballot, except a ballot label or voting machine ballot, shall bear the following information on the face: "NOTICE TO ELECTORS: This ballot may be invalid unless initialed by 2 election officials serving as inspec-

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tors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk.”

History: 1977 c. 427; 1979 c. 260, 311; 1983 a. 484 s. 172 (3).

5.55 Ballot identification. On every ballot, except a ballot label or voting machine ballot, shall be printed “Official Ballot” or “Official Ballot for” followed by the designation of the polling place for which the ballot has been prepared, the date of the election, and the official endorsement and blank certificates. The number of the ward or wards or aldermanic district, if any, and the name of the municipality may be omitted in printing and stamped or written on the ballots at any location which is clearly visible at the option of the county clerk. Printed information and initials shall appear on the back and outside of the ballot. When a ballot card is employed with an electronic voting system, the date of the election may be printed or stamped on the back of the ballot card in such a manner that the card is not reusable, at the option of the county clerk. Each ballot shall be prepared in substantially the following form:

OFFICIAL BALLOT
FOR
.... Ward (Wards) (if any), Aldermanic district (if any),
City (Village or Town) of
19....
.....
.....
Inspectors

Absent Elector’s Ballot issued by
.... Municipal Clerk

[I] [We] certify that the within ballot was marked by [me] [us] for an elector incapable under the law of marking the ballot and as directed by the elector.

.... (Signature of assisting elector)
.... (Signature of official)
.... (Title)
.... (Signature of official)
.... (Title)

I certify that the within ballot was marked by me at the request of an absentee elector incapable under the law of marking the ballot and as directed by the elector.

.... (Signature of officer authorized to administer oaths)
.... (Title)

History: 1971 c. 304 s. 29 (1), (2); 1975 c. 421; 1977 c. 427; 1979 c. 311; 1981 c. 4; 1983 a. 484 s. 172 (3).

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

History: 1981 c. 377 s. 5

5.58 Spring primary ballots. At spring primary elections the following ballots, when necessary, shall be provided for each ward. Only nonpartisan candidates nominated for office by nomination papers shall have their names placed on the official spring primary ballot under the proper office designation, but the ballots shall allow room for write-in candidates.

(1) MUNICIPAL; COUNTY SUPERVISOR BALLOTS. There shall be separate ballots for municipal and county primaries.

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

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

(1g) SCHOOL DISTRICT. (a) There shall be a separate ballot for city school officers when so required. Officers elected under s. 120.44 (2) (a) may be placed on the same ballot as other city officers.

(b) In cities of the 1st class, the names of the candidates for the seat of the member elected at-large to the board of school directors shall be placed on the official city primary ballot and there shall be a separate ballot giving the names of the candidates for any combined aldermanic district seat to be filled on the board of school directors. All names for the at-large seat shall

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be placed in one or more separate columns or rows on the ballot.

(c) The arrangement of candidates for school board seats shall be determined by the school district clerk or the executive secretary of the city board of election commissioners by the drawing of lots not later than the 7th day following the deadline for filing nomination papers or declarations of candidacy. The method of determining arrangement shall be the same as provided in s. 5.60 (1) (b). Sufficient space shall be provided on the ballot for write-in candidates.

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

(2) JUDICIARY; STATE SUPERINTENDENT OF PUBLIC INSTRUCTION; COUNTY EXECUTIVE; AND COUNTY SUPERVISORS. (a) There shall be one separate ballot for state superintendent, judicial officers, county executive under ss. 59.031 and 59.032 and county supervisor. In counties under 500,000 population, the ballot shall provide for the election of 2 supervisors whenever the districting plan adopted under s. 59.03 (3) (b) so provides, in accordance with the method of election specified in the plan. In counties having a population of 500,000 or more, the ballot also shall include those offices under s. 8.11 (2) and (2m). The arrangement of names of candidates for state superintendent, justice, court of appeals judge and circuit court judge shall be determined by the board in the manner specified in s. 5.60 (1) (b). The arrangement of names of candidates for county executive and county supervisor shall be determined by the county clerk or by the executive secretary of the county board of election commissioners in the manner specified in s. 5.60 (1) (b). The ballot shall be titled "Official Ballot for Judicial, State Superintendent of Public Instruction, County Executive and County Supervisor Primary", except that in counties having a population of 500,000 or more, it shall be titled "Official Ballot for County Officers, Judicial, State Superintendent of Public Instruction and School Board Primary".

(b) The candidates for the offices shall be designated on the ballot as follows: "For Justice of the Supreme Court", "For State Superintendent", "For Court of Appeals Judge", "For Circuit Judge Br.", and others as the situation requires.

(2m) METROPOLITAN SEWERAGE COMMISSION. There shall be a separate ballot for members of the metropolitan sewerage commission if commissioners are elected under s. 66.23 (11) (am), with candidates for different seats listed in separate columns or rows if more than one seat is contested at any election. Arrangement of the names on the ballot shall be determined by the board. The ballot shall be titled "Official Primary Ballot for Metropolitan Sewerage Commission".

(3) NAMES ON SPRING BALLOT. Only 2 candidates for state superintendent, for any judicial office, for any elected seat on a metropolitan sewerage commission or town sanitary district commission, in counties having a population of 500,000 or more only 2 candidates for member of the board of supervisors within each district, in counties having a population of less than 500,000 only 2 candidates for each member of the county board of supervisors from each district or numbered seat or only 4 candidates for each 2 members of the county board of supervisors from each district whenever 2 supervisors are elected to unnumbered seats from the same district, in 1st class cities only 2 candidates for any at-large seat and any combined aldermanic district seat as are to be elected to the board of school directors, in school districts electing school board members to numbered seats, or pursuant to an apportionment plan or district representation plan, only 2 school board candidates for each numbered seat or within each district, and twice as many candidates as are to be elected members of other school boards or other elective officers receiving the highest number of votes at the primary shall be nominees for the office at the spring election. Only their names shall appear on the official spring ballot.

History: 1971 c. 304 ss. 6 to 8, 29 (2); 1973 c. 134, 243; 1973 c. 334 s. 57 (2); 1973 c. 340; 1975 c. 93; 1977 c. 187, 272, 445, 449; 1979 c. 32, 221, 260; 1981 c. 20, 377; 1983 a. 484; 1983 a. 532 s. 36.

5.60 Spring election ballots. At spring elections the following ballots, when necessary, shall be provided for each ward.

(1) JUDICIARY; STATE SUPERINTENDENT; COUNTY EXECUTIVE AND COUNTY SUPERVISORS. There shall be one separate ballot for the county executive under ss. 59.031 and 59.032, county supervisor, judicial officers and state superintendent. For county supervisor, the ballot shall be prepared in accordance with ss. 5.58 (2) and

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59.03 (3). Arrangement of the candidates for county executive and county supervisor shall be determined by the county clerk or the executive secretary of the county board of election commissioners in the manner prescribed in par. (b).

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

(b) The board shall certify the candidates' names and designate the official ballot arrangement for candidates for justice, court of appeals judge, circuit judge, state superintendent and, if commissioners are elected under s. 66.23 (11) (am), the metropolitan sewerage commission. The arrangement of names of all candidates on the ballot whose nomination papers are filed with the board shall be determined by the board by the drawing of lots not later than the 7th day following the deadline for filing nomination papers. Whenever a primary is held for an office, a 2nd drawing of all candidates for that office shall be held by or under the supervision of the board not later than the 3rd day following the completion of the primary canvass to determine the arrangement of candidates on the election ballot.

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

(3) CITY. There shall be a separate ballot giving the names of all candidates for city and school offices, except under sub. (4), printed in the same form as prescribed by the board under s. 7.08 (1) (a). City election ballots may vary in form to conform to the law under which an election is held.

(a) No party designation shall appear on the official ballot.

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

(4) SCHOOL DISTRICT. (a) There shall be a separate ballot for city school officers when so required. Officers elected under s. 120.44 (2) (a) may be placed on the same ballot as other city officers.

(b) In cities of the 1st class, the names of the candidates for the seat of the member elected at-large to the board of school directors shall be placed on the official city ballot and there shall

be a separate ballot giving the names of the candidates for any combined aldermanic district seat to be filled on the board of school directors. The names for the at-large seat shall be placed in the same column or row on the ballot.

(c) The arrangement of candidates for school board seats shall be determined by the school district clerk or the executive secretary of the city board of election commissioners by the drawing of lots not later than the 7th day following the deadline for filing nomination papers or declarations of candidacy, if there is no primary, or not later than the 3rd day following the completion of the primary canvass if a primary is held. The method of determining arrangement shall be the same as provided in sub. (1) (b). Sufficient space shall be provided on the ballot for write-in candidates.

(4m) METROPOLITAN SEWERAGE COMMISSION. A separate ballot shall list the names of all candidates for metropolitan sewerage commission seats, if commissioners are elected under s. 66.23 (11) (am). The names for the different seats shall be placed in separate columns or rows if more than one seat is contested at any election.

(5) VILLAGE. There shall be a separate ballot giving the names of all candidates for village offices.

(a) The offices to be filled shall be arranged on the official ballot in the order they are named in the statutes creating them. Where there is more than one ward, candidates shall be arranged by using the same method as that used by the board under sub. (1) (b). Sufficient space shall be left under each office for write-in candidates.

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

(6) TOWN. There shall be a separate ballot giving the names of all candidates for elective town offices in the same form as prescribed by the board under s. 7.08 (1) (a). There shall be 2 ballots. One ballot shall be used for the election of supervisors to numbered seats and one ballot shall be used for the election of supervisors to unnumbered seats. On the ballot used for the election of supervisors to numbered seats, all supervisor candidates shall be listed together and the voting instructions shall state "Vote for [insert number of supervisors to be elected]". All towns shall elect their supervisors to unnumbered seats unless the annual town meeting adopts a plan to elect supervisors to numbered seats. The names of candidates for town office

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shall be arranged by using the same method as that used by the board under sub. (1) (b). A space shall be provided under each office on the ballot for a write-in candidate.

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

(7) REFERENDUM BALLOTS. There shall be a separate ballot setting forth all propositions requiring a vote in the form and manner provided by s. 5.64.

(8) BALLOTS FOR PRESIDENTIAL VOTE. There shall be a separate ballot for each party qualified under s. 5.62, listing the names of all potential candidates of that party determined under s. 8.12 and affording, in addition, an opportunity to the voter to nominate another potential candidate by write-in vote or to vote against the choices offered on the ballot. The order of such presidential candidates shall be determined by lot by or under the supervision of the board. Each voter shall be given the ballots of all the parties participating in the presidential preference vote, but may vote on one ballot only.

(a) An official ballot shall be printed and provided for use in each voting district. The form of each ballot shall be substantially as follows:

1. Form 1, to be used when there are several candidates:

**OFFICIAL BALLOT
PRESIDENTIAL PREFERENCE VOTE**
..... Party

MARK THIS BALLOT IN ONE SPACE ONLY. You have one of 3 choices—you may either:

Express your preference for one of the persons whose names are printed on this ballot (in that case, make a cross (X) in the square after that person's name); or

Vote against all of the names printed on this ballot, thus in fact expressing your preference for an uninstructed delegation from Wisconsin to the national convention of the party (in that case, make a cross (X) in the square following "None of the names shown"); or

Write in the name of another person to become the presidential candidate of the party (in that case, write that person's name into the space following "Write-in candidate").

- OLE CARLSON ()
- AMOS DUNCAN ()
- JAMES UNDERWOOD ()

None of the names shown ()

Write-in candidate

2. Form 2, to be used when there is only one candidate:

**OFFICIAL BALLOT
PRESIDENTIAL PREFERENCE VOTE**
..... Party

MARK THIS BALLOT IN ONE SPACE ONLY. You have one of 3 choices—you may either:

Express your preference for the person whose name is printed on this ballot (in that case, make a cross (X) in the square marked "YES" following that person's name); or

Vote against the person whose name is printed on this ballot, thus in fact expressing your preference for an uninstructed delegation from Wisconsin to the national convention of the party (in that case, make a cross (X) in the square marked "NO" following that person's name); or

Write in the name of another person to become the presidential candidate of the party (in that case, write that person's name into the space following "Write-in candidate").

- JOHN DOE YES ()
- NO ()

Write-in candidate

3. Form 3, to be used when there are no candidates who have qualified to appear on the ballot:

**OFFICIAL BALLOT
PRESIDENTIAL PREFERENCE VOTE**
..... Party

MARK THIS BALLOT IN ONE SPACE ONLY. There are no candidates of the party who have qualified to have their names appear on the printed ballot. You have 2 choices—you may either:

Express your preference for an uninstructed delegation from Wisconsin to the national convention of the party (in that case, make a cross (X) in the square following "Uninstructed delegation"); or

Write in the name of a person to become the presidential candidate of the party (in that case, write that person's name into the space following "Write-in candidate").

Uninstructed delegation ()

Write-in candidate

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

History: 1971 c. 304 ss. 9 to 11, 29 (2); 1971 c. 336; 1973 c. 134; 1973 c. 334 s. 57; 1975 c. 93; 1977 c. 187, 427, 445, 449;

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1979 c. 221, 260, 355; 1981 c. 377; 1983 a. 484; 1983 a. 532 s. 36.

See note to Art. I, sec. 1, citing Democratic Party of U S v. Wisconsin, 450 US 107 (1981).

5.62 September primary ballots. At September primaries, where necessary, the following ballot or ballots shall be provided for each ward, in the same form as prescribed by the board under s. 7.08 (1) (a).

(1) (a) There shall be an Australian ballot made up of the several party tickets with each party entitled to participate in the primary under par. (b) or sub. (2) having its own ballot. The independent candidates for state office shall have a separate ballot for all such candidates as under s. 5.64 (1) (e). The several ballots shall be secured together at the bottom. The party ballot of the party receiving the most votes for governor at the last general election shall be on top with the other parties arranged in an order based on their vote for governor at the last general election. The ballot listing the independent candidates shall be placed at the bottom. At polling places where voting machines are used, each party and the independent candidates shall be represented in one or more separate columns or rows on the ballot. At polling places where an electronic voting system is used other than an electronic voting machine, each party and the independent candidates may be represented in separate columns or rows on the ballot.

(b) Every recognized political party listed on the official ballot at the last general election whose candidate for a statewide office, including presidential elector, received at least one percent of the total votes cast for that office shall have a separate primary ballot or one or more separate columns or rows on the primary ballot as prescribed in par. (a) and a separate column on the general election ballot in every ward and election district. An organization which was listed as "independent" at the last general election and whose candidate meets the same qualification shall receive the same ballot status upon petition of the chairman and secretary of the organization to the board requesting such status and specifying their party name, which may not duplicate the name of an existing party. A petition under this paragraph may be filed no later than 5 p.m. on June 1 in the year of each general election.

(2) Any political organization may be represented on a separate primary ballot or one or more separate columns or rows on the primary ballot as prescribed in sub. (1) (a) and a separate column on the general election ballot in every ward and election district if, not later than June 1 in the year of a September primary, it files with the board a petition so requesting. To

qualify for a separate ballot, the petition shall be signed by at least 10,000 electors, including at least 1,000 electors residing in each of at least 3 separate congressional districts. The petition shall conform to s. 8.15 insofar as applicable. No signature obtained before January 1 in the year of filing is valid. When the candidates of a political organization filing a valid petition fulfill the requirements prescribed by law, they shall appear on a separate ballot or one or more separate columns or rows on the ballot for the succeeding 2-year period ending on June 1.

(3) The board shall designate the official primary ballot arrangement for statewide offices by using the same procedure as provided in s. 5.60 (1) (b) for candidates for justice; congressional and state senate candidates by using the same procedure as for circuit judges under s. 5.60 (1) (b) by numbering the assembly districts and parts of assembly districts within each congressional or senate district; and assembly candidates, by similarly numbering and arranging by population the counties within an assembly district. Independent candidates for state office shall be listed for each office in an order drawn by lot by or under the supervision of the board. Below the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers.

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

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

(b) The county board of election commissioners in counties having a population of more than 500,000 shall prepare the official primary ballot. The commissioners shall arrange the names of all candidates for each office whose nomination papers are filed at the county level, using the same method as that used by the elections board under s. 5.60 (1) (b).

(5) At the September primary, an elector may vote for the candidates of only one party, or the elector may vote for any of the independent candidates for state office listed; but the elector may not vote for more than one candidate for a single office. A space shall be provided on the ballot for an elector to write in the name of his or her choice as a party candidate for any office, but no space shall be provided to write in the names of independent candidates.

History: 1971 c. 304 ss. 12, 29 (2); 1971 c. 336; 1973 c. 334 s. 57; 1975 c. 93; 1977 c. 107, 427; 1979 c. 260, 311, 328; 1981 c. 377; 1983 a. 484.

Filing of a proper petition by the requisite number of electors in a senate, assembly or congressional district will qualify the political organization referred to in said petition as a party entitled to a separate ballot within the specific district only for all the state, congressional, legislative and county offices for which an elector of such district may vote. The petition may be circulated commencing after any November general election and ending on the June 1 immediately prior to the next succeeding September primary. A petition filed February, 1972, signed by the electors of an assembly district, would not qualify filing political organization for a separate ballot at the presidential preference primary to be held at the April, 1972, spring election 61 Atty. Gen. 41.

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

(1) **OFFICIAL BALLOT.** There shall be a separate ballot giving the names of all candidates for statewide, congressional, legislative and county offices in the same form as prescribed by the board under s. 7.08 (1) (a).

(a) The ballot shall be labeled "Official Ballot" in lettering at least three-eighths inch high. Directly underneath in plain, legible type, shall be the following voting instructions: "If you desire to vote a straight party ticket for all statewide, congressional, legislative and county offices, make a cross (X) in the circle under the party designation at the top of the party column. If you desire to vote for individual candidates, make a cross (X) in the square at the RIGHT of the name of each candidate for whom you desire to vote. To vote for a person whose name is not printed on the ballot, write the name in the blank space provided for the purpose. When voting for governor and lieutenant governor, you may vote only for the candidates on one ticket jointly or write in the names of persons in both spaces." Under the party designation at the top of each party column shall appear the following words in boldface type: "Make a cross (X) in this circle to vote a straight party ticket."

(b) Below the voting instructions the ballot shall be divided into vertical columns. The names of the candidates on the regular party tickets nominated at the primary or replacements appointed under s. 8.35 (2) shall be printed each in a separate column under the party designation. The columns shall be arranged from left to right according to rank, based on the number of votes received by the party's candidate for president or governor at the last general election beginning with the party that received the most votes. To the right of the party columns shall be a column for the names of independent candidates for each office, or more than one column if the first column does not provide sufficient space for the names of all such candidates.

(c) The party designation shall be printed at the top of each column and under it shall appear

a circle at least three-eighths of an inch in diameter for electors wishing to vote a straight party ticket. Within each column only candidates nominated by the party designated at the head of the column shall appear.

(d) The offices shall be consecutively arranged vertically beginning at the top with governor and lieutenant governor, then remaining statewide offices, if any, congressional offices, legislative offices and ending with county offices.

(e) Within each column, each space shall state the office to be voted for directly above the candidate's first and last name. The candidate's name shall be placed in the party column by which nominated or if independent, in a column designated independent and all candidates for the same office shall appear within the same rows on the ballot. Below the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers. Independent candidates for the same county office shall be listed in the same manner in an order drawn by lot by or under supervision of the county clerk or board of election commissioners. The board shall conduct a redrawing for purposes of determining the arrangement of independent candidates for state office in the manner provided in s. 5.60 (1) (b). To the right of each candidate's name, in each column, shall be a square for the elector to make his or her cross (X).

(f) In the case of balloting for the office of governor and lieutenant governor, the names of the candidates shall be placed in the party column by which nominated or if independent, in a column designated independent. To the right of the names of the set of candidates for governor and lieutenant governor, in each column shall be one square for the elector to cast his ballot jointly for both offices.

(g) Following under the independent candidates for each office, a space shall be provided for the elector to write in the name of a candidate of his or her choice for that office.

(2) **REFERENDUM BALLOT.** There shall be a separate ballot when any proposed constitutional amendment or any other measure or question is submitted to a vote of the people. The ballot shall give a concise statement of each question in accordance with the act or resolution directing submission in the same form as prescribed by the board under s. 7.08 (1) (a). Unless otherwise expressly provided, this ballot form shall be used at all elections when questions are submitted to a vote of the people.

(a) The ballot shall be titled "Official Referendum Ballot" in lettering at least three-eighths

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of an inch high. Directly underneath in plain, legible type shall be the following voting instructions: "If you desire to vote on any question, make a cross (X) in the square beneath the question after "yes" if in favor of the question, or make a cross (X) in the square after "no" if opposed to the question."

(b) Under voting instructions shall be the concise statement of the question submitted. Directly under each question shall appear the words "yes" and "no" with a square to the right of each word.

(c) The official referendum ballot prescribed under this subsection shall be utilized at every election, except that the format shall be altered to the extent provided or required by other laws establishing or authorizing referenda to be conducted. All referenda shall appear on a separate ballot, but more than one referendum question may appear on the same referendum ballot whenever the questions are numbered and all electors voting the ballot are entitled to vote upon all questions appearing thereon. State and county referenda shall appear on a separate ballot from municipal or special district referenda. The form of all referendum ballots shall be substantially the same as that prescribed by the board under s. 7.08 (1) (a).

(3) **PRESIDENTIAL BALLOTS.** There shall be a separate ballot when the president and vice president of the United States are to be elected containing the names of all candidates for the offices in the same form as prescribed by the board under s. 7.08 (1) (a).

(a) The ballot shall be titled "Official Presidential Ballot" in lettering at least three-eighths inch high. Directly underneath in plain, legible type shall be the following voting instructions: "Make a cross (X) in the square opposite the names of the candidates for whose electors you desire to vote or write in the names of candidates for president and vice president in the space provided for the purpose. Vote in ONE square only." The names of the candidates for the offices of president and vice president certified under s. 8.16 (7) or filed under s. 8.20 shall appear on the ballot in the form prescribed in s. 7.08 (2) (a). The names of the presidential electors for the candidates supplied under ss. 8.18 (2) and 8.20 (2) (d) are not listed on the ballot but a vote for the candidates for president and vice president is a vote for them through their named presidential electors.

(b) The party candidates shall be arranged consecutively from top to bottom based on the number of votes received by their party's candidate for governor at the last election beginning with the party that received the most votes. The independent president-vice president candi-

dates shall be listed together in an order drawn by lot by or under supervision of the board, following under the party candidates. Below the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers. Following under the independent candidates, a space shall be left for writing in the names of a candidate for president and vice president.

History: 1971 c. 304 s. 29 (2); 1977 c. 26, 427; 1979 c. 260; 1981 c. 79, 175, 377, 391; 1983 a. 484

5.65 Special referendum ballots. Unless otherwise provided, ballots for special referenda shall conform to the format prescribed in s. 5.64 (2), insofar as applicable.

History: 1983 a. 484.

5.66 Number of ballots. (1) For local elections, where necessary, municipal clerks shall have sufficient ballots printed or otherwise prepared whenever a voting system does not utilize printed ballots to assure a ballot for all electors or voting machines. For all other elections the municipal clerks shall certify to their county clerk, on the first day of the month preceding the month in which the primary is held, the approximate number of electors in the municipality. The county clerk shall total these estimates and order a sufficient supply to assure ballots for all electors and voting machines.

(2) The county clerk or board of election commissioners shall print a sufficient number of sample ballots. The municipal clerk or board of election commissioners shall print sample ballots whenever the municipality prepares ballots under s. 7.15 (2) (b) or (c). Sample ballots shall be printed on nonwhite colored paper and shall be overprinted "SAMPLE". Voting machine sample ballots shall be a reduced size diagram of the face of the board or screen inside the voting machine with all candidates, issues and voting instructions as they will appear on the official ballot. Sample ballots to be used with an electronic voting system in which ballot labels and ballot cards are used shall be an actual size copy of the ballot label and ballot card. The clerk or board of election commissioners printing the ballots shall distribute the samples approximately as follows: 45% shall be kept in the clerk's or board's office and distributed to electors requesting them; 45% shall be sent to the municipalities, or, if the municipality prints ballots, 45% shall be sent to the county for distribution to the electors; and 10% shall be reserved to be sent to the polling places by municipalities in proportion to the number cer-

tified in sub. (1) and made available to electors at the polls on election day.

History: 1979 c. 260, 311, 355; 1983 a. 484

5.68 Cost of elections. (1) Except as otherwise expressly provided, all costs for ballots, supplies, machines, equipment and any other material necessary in preparing or conducting any election shall be paid for by the county or municipality whose clerk or board of election commissioners is responsible for providing them under ch. 7.

(2) When voting machines are used or when an electronic voting system is used in which all candidates and referenda appear on the same ballot card, the ballots for all national, state and county offices and for county and state referenda shall be printed and paid for by the county wherein they are used. When the voting machine or electronic voting system ballot includes a school district ballot, that portion of the ballot shall be paid for by the municipality in the school district with the property having the highest equalized valuation. When voting machine or electronic voting system ballots include 2 or more levels of government, the cost of ballot printing or preparation shall be prorated between the units of government sharing responsibility for the ballot.

History: 1979 c. 260, 311, 355.

5.70 Preparation of ballots; printing of registration lists. (1)

The county clerk shall award the printing or preparation of ballots to the lowest responsible bidder upon the accepted bidder's filing with the clerk a bond in the penal sum of at least twice the amount of the accepted bid. If the ballots must be printed or prepared by the manufacturer or distributor of an electronic voting system in order to be utilized with that system, the award may be made without bidding upon furnishing of the required bond. The bond shall be signed by one or more sureties and conditioned upon the bidder's faithful performance of all conditions imposed upon him or her by the clerk. The clerk shall keep all ballot printing or preparation proposals in his or her office. The county clerk may reject all bids. If bids are not received for voting machine ballots the county clerk may enter into contracts for the printing of the ballots without bids.

(2) The city board of election commissioners in cities having a population of more than 500,000 may similarly provide for the printing of registration lists.

History: 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 311.

5.72 Correcting ballot errors. (1) As soon as possible after ballots are delivered to the county

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

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

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

History: 1979 c. 260; 1979 c. 311 s. 19; 1979 c. 355 ss. 9, 10; 1981 c. 377; 1983 a. 484

SUBCHAPTER III

ELECTRONIC VOTING SYSTEMS

5.76 Adoption, experimentation or discontinuance of systems. The governing body of any municipality may by ordinance adopt, experiment with, or discontinue any electronic voting system authorized by this subchapter and approved under s. 5.91 for use in this state, and may purchase or lease materials or equipment for such system to be used in all or some of the wards within its jurisdiction, either exclusively in combination with mechanical voting machines, or in combination with paper ballots where such ballots are authorized to be used.

History: 1979 c. 311

5.77 Applicable procedures. (1) So far as applicable, the procedure provided for voting

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paper ballots applies when an electronic voting system employing the use of ballots distributed to electors is used.

(2) So far as applicable, the procedure provided for voting with mechanical voting machines applies when an electronic voting system employing the use of electronic voting machines is used.

History: 1979 c. 311.

5.78 Voting booths. At polling places where an electronic voting system employing the use of ballots distributed to electors is used, the municipality shall supply a sufficient number of voting booths for the use of electors as provided in s. 5.35 (2).

History: 1979 c. 311.

5.79 Instruction of electors. At polling places where an electronic voting system employing the use of ballot cards or ballot labels and voting devices is used, the election officials shall offer each elector instruction in the operation of the voting device and ballot label or ballot card before the elector enters the voting booth. No instructions may be given after the elector has entered the voting booth, except as authorized under s. 6.82 (2). All instructions shall be given by election officials in such a manner that they may be observed by other persons in the polling place.

History: 1979 c. 311.

5.80 Demonstrator electronic voting system. When an electronic voting system is used in a forthcoming election, the municipal clerk may provide, for the purpose of instructing electors in the election, one or more demonstrator electronic voting systems using the names of fictitious candidates or fictitious questions for placement in any public building within the municipality in which the election occurs. If such placement of a demonstrator takes place it shall be made available at least 30 days before the election.

History: 1979 c. 311.

5.81 Ballot information; arrangement; absentee ballots. (1) Whenever the statutes require the use of separate ballots or columns or rows for offices, parties or referenda, and an electronic voting system employing a ballot label or ballot card is used at a polling place, a single ballot may be used for all offices, referenda and parties. The ballot information, whether placed on the ballot or on the voting device, shall, as far as practicable, be grouped and ordered in the same manner as provided for other ballots under this chapter, except that the information on the ballot card need not be in

separate columns or rows and the information in the ballot label booklet may appear on a number of pages.

(2) When an electronic voting system utilizes a ballot label booklet and ballot card, ballots for candidates and ballots on referenda may be placed on the voting device by providing in the ballot booklet separate ballot label pages or series of pages distinguished by differing colors. Whenever practicable, all candidates for the same office shall appear in the booklet on the same page or facing pages. More than one question may be placed on the same ballot page or series of pages. Ballot label pages for referenda shall be on paper of blue color and shall precede all other ballot label pages in the ballot label booklet. Ballot label pages for candidates shall be on paper of white color. In elections where provision is made for straight party voting by marking a party circle, the designation of the political parties for straight party voting shall be on a separate page on which no names of candidates may appear. On each succeeding page of the candidate booklet, where the ballot information is listed vertically, the party affiliation of each candidate or the designation "independent" or the candidate's statement of principles, if any, shall appear immediately to the left of the candidate's name, and the name of candidates for the same office shall be listed vertically under the title of that office.

(3) If a municipality utilizes an electronic voting system in which ballots distributed to electors are employed, absentee ballots may consist of ballots utilized with the system or paper ballots and envelopes voted in person in the office of the municipal clerk or voted by mail. If a ballot card is used for voting by mail it shall be accompanied by a punching tool or marking device, elector instructions and a sample ballot showing the proper positions to vote on the ballot card for each party, candidate or referendum and, if the ballot card is to be punched, shall be mounted on a suitable material.

History: 1979 c. 311.

5.82 Separate write-in ballots. A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the elector places his or her ballot card after voting, shall be provided by each municipality where an electronic voting system is utilized to permit electors to write in the names of persons whose names are not on the ballot whenever write-in votes are authorized.

History: 1979 c. 311.

5.83 Preparation for use of voting devices; comparison of ballots. Where voting devices

are used at a polling place, the municipal clerk shall cause the voting devices to be put in order, set, adjusted and made ready for voting when delivered to the polling place. Before the opening of the polls the inspectors shall compare the ballots used in the voting devices with the sample ballots furnished and see that the names, numbers and letters thereon agree and shall certify thereto on forms provided by the board.

History: 1979 c. 311.

5.84 Testing of equipment; custody of 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 punched or marked as to record a predetermined number of valid votes for each candidate and on each referendum. The test shall include for each office one or more ballots which have votes in excess of the number allowed by law and, for a partisan primary election, one or more ballots which have votes cast for candidates of more than one recognized political party, in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the municipal clerk shall ascertain the cause and correct the error. The clerk shall make an errorless count before the automatic tabulating equipment is approved by the clerk for use in the election.

(2) Before beginning the ballot count at each polling place or at the central counting location, the election officials shall witness a test of the automatic tabulating equipment by engaging the printing mechanism and securing a printed result showing a zero count for every candidate and referendum. After the completion of the count, the ballots and programs used shall be sealed and retained under the custody of the municipal clerk in a secure location.

History: 1979 c. 311.

5.85 Receiving, counting, tallying and return of ballots. (1) At any polling place at which an electronic voting system is utilized, the follow-

ing procedures for receiving, counting, tallying and return of the ballots shall be used. Whenever paper ballots are utilized at a polling place in combination with ballots employed in an electronic voting system, the paper ballots shall be deposited in a separate ballot box or boxes, according to the types of ballots used. For the purpose of transporting the ballots or the record of the votes cast, the municipal clerk shall provide a secure container for each polling place. At each polling place, the applicable portions of the procedure prescribed for initiating the canvass under s. 7.51 (1) shall be performed, except that no count of the ballots, except write-in votes and paper ballots used for absentee voting and other purposes authorized by law, may be performed at a polling place if a central counting location is designated for the counting of ballots at that polling place by the municipality.

(2) The election officials shall examine the ballots or record of votes cast for write-in votes and shall count and tabulate the write-in votes. When an electronic voting system is used which utilizes a ballot which is distributed to electors, before separating the remaining ballot cards from their respective covering envelopes, the election officials shall examine the ballots for write-in votes. When an elector has cast a write-in vote, the election officials shall compare the write-in vote with the votes on the ballot to determine whether the write-in vote results in an overvote for any office. In case of an overvote for any office, the election officials, consisting in each case of at least one election official of each of the 2 major political parties, whenever officials of both parties are present, shall make a true duplicate ballot of all votes on the ballot card except for the office which is overvoted, by using the ballot label booklet and voting device for the ward, if any, and one of the punching or marking devices so as to transfer all votes of the elector except for the office overvoted, to an official ballot of that kind used in the ward at that election. Write-in votes shall be counted as provided in s. 7.50 (2) (d). The original ballot upon which there is an overvote shall be clearly labeled "Overvoted Ballot" and the ballot so produced "Duplicate Overvoted Ballot", and each shall bear the same serial number which shall be placed thereon by the election officials, commencing with number "1" and continuing consecutively for each of the ballots of that kind in that ward. The election officials shall initial the "Duplicate Overvoted Ballot" ballots and shall place them in the container for return of the ballots. The "Overvoted Ballot" ballots and their envelopes shall be placed in the "Original Ballots" envelope. Ballots bearing write-in votes marked in the place designated therefor

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and bearing the initials of an election official and not resulting in an overvote and otherwise complying with the election laws as to marking shall be counted, tallied, and their votes recorded on a tally sheet provided by the municipal clerk. Ballot cards and ballot card envelopes shall be separated and all ballots except any which are defective or overvoted shall be placed separately in the container for return of the ballots, along with the ballots marked "Duplicate Overvoted Ballots".

(3) The election officials shall examine the ballots to determine if any is damaged or defective so that it cannot be counted by the automatic tabulating equipment. If any ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, the election officials, consisting in each case of at least one official of each of the 2 major political parties whenever present, in the presence of witnesses, shall make a true duplicate ballot of all votes on that ballot by using the ballot label booklet and voting device for the ward, if any, and one of the punching or marking devices so as to transfer all votes of the elector to an official ballot of that kind used in the ward in that election. The original ballot shall be clearly labeled "Damaged Ballot" and the ballot so produced "Duplicate Damaged Ballot", and each shall bear the same number which shall be placed thereon by the election officials, commencing with number "1" and continuing consecutively for the ballots of that kind in the ward. The election officials shall initial the "Duplicate Damaged Ballot" ballots, and shall place them in the container for return of the ballots. The officials shall place "Damaged Ballot" ballots and their envelopes in the "Original Ballots" envelope.

(4) The original ballots shall be preserved with the duplicate ballots and delivered by the inspectors to the municipal clerk. The officials shall then make out a slip indicating the number of electors voting in person, number of absentee ballots deposited in the ballot box, and the total number of electors of each ward served by the polling place who voted at the election, which shall be signed by all the inspectors.

(5) If the municipality has designated a central counting location to be used to count ballots under s. 7.51 (1), the inspectors shall count and deposit the paper ballots in the container. The inspectors shall then place the slip made out under sub. (4) in the container. The inspectors shall also place the tally sheet recording the write-in votes and other votes cast on paper ballots, and all other ballots, or the record of the votes cast on an electronic voting system where no ballots are distributed to elec-

tors, in the container and shall thereupon immediately seal the container with an adhesive seal provided by the municipal clerk for the purpose in such manner that the seal completely covers the opening in the container, and each of the inspectors shall sign the seal. The "Defective Ballots" envelope, and "Original Ballots" envelope each shall be securely sealed and the flap or end thereof of each signed by the inspectors and returned to the central counting location with the box for return of the ballots, enclosed ballots and returns. Thereupon 2 of the election officials, of different political parties whenever officials of both parties are present, shall forthwith and by the most direct route transport the container and envelopes to the central counting location designated by the municipal clerk.

History: 1979 c. 311.

5.86 Proceedings at central counting location.

(1) At the central counting location, a team of election officials designated by the municipal clerk shall check the container returned containing the ballots to determine that all seals are intact, and thereupon shall open the container, check the inspectors' slip and compare the number of ballots so delivered against the total number of electors of each ward served by the polling place who voted, remove the ballots or record of the votes cast and deliver them to the technicians operating the automatic tabulating equipment. Any discrepancies between the number of ballots and total number of electors shall be noted on a sheet furnished for that purpose and signed by the election officials.

(2) All proceedings at the central counting location shall be under the direction of the municipal clerk. Except for any specially trained technicians required for the operation of the automatic tabulating equipment, the employes at the central counting location shall be equally divided between members of the 2 major political parties under s. 7.30 (2) (a) and all duties performed by the employes shall be by teams consisting of an equal number of members of each political party whenever sufficient persons from each party are available.

History: 1979 c. 311.

5.87 Tabulating votes. If a central counting location is not utilized, the procedure for tabulating the votes by the automatic tabulating equipment shall be under the direction of the chief inspector and shall conform to the requirements of the automatic tabulating equipment. If any ballot is not accepted by the automatic tabulating equipment, the election officials shall make a duplicate ballot to replace that ballot in the manner prescribed in s. 5.85 (3). All proceedings at the polling place and at any central

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counting location shall be open to the public, but no person, except those employed and authorized for the purpose, may touch any ballot, container, envelope, return or equipment.

History: 1979 c. 311; 1983 a. 484.

5.89 Official return. The return produced by the automatic tabulating equipment shall be appended to the tally sheet by the canvassers. The return constitutes a part of the official return for the ward or election district. The municipal clerk shall check the totals shown by the return and, if it appears that there is an obvious discrepancy with respect to the number of votes cast in any ward or election district, the clerk shall have the ballots for that ward or election district publicly retabulated to correct the return. Upon completion of the count, the return is open to the public.

History: 1979 c. 311

5.90 Recounts. 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. The officials 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 ballots shall be checked for the presence or absence of the initials and other distinguishing marks, the ballots marked "Rejected", "Defective" and "Objected to" shall be examined to determine the propriety of such labels, and the "Duplicate Overvoted Ballots" and "Duplicate Damaged Ballots" shall be compared with their respective originals to determine the correctness of the duplicates.

History: 1979 c. 311

5.91 Requisites for approval of ballots, devices and equipment. No ballot, voting device, automatic tabulating equipment or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the board. The board may revoke its approval of any ballot, device, equipment or materials at any time for cause. No such ballot, voting device, automatic tabulating equipment or related equipment or material may be approved unless it fulfills the following requirements:

(1) It enables an elector to vote in secrecy and to select the party or the independent candidates for whom an elector will vote in secrecy at a partisan primary election.

(2) Except at a primary election, it enables an elector to vote a straight party ticket, but the automatic tabulating equipment counts the

vote of an elector who casts a vote for a candidate for an office outside the straight party ticket for that office only.

(3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.

(4) It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.

(5) It accommodates all referenda to be submitted to the electors in the form provided by law.

(6) The voting device or machine permits an elector in a primary election to vote for the candidates in the party primary of his or her choice, and the automatic tabulating equipment or machine rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.

(7) It permits an elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(8) It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.

(9) It prevents an elector from voting for the same person more than once for the same office, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.

(10) It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.

(11) It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records

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of votes cast prior to the time that the problem occurs is preserved.

(12) It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.

(13) The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.

History: 1979 c. 311; 1983 a. 484.

5.92 Bond may be required. Before entering into a contract for the purchase or lease of an electronic voting system or any ballots, voting devices, automatic tabulating equipment or related equipment or materials to be used in connection with a system, any municipality may require the vendor or lessor to provide a performance bond with a licensed surety company as surety, guaranteeing the supply of additional equipment, parts or materials, provision of adequate computer programming, preventive maintenance or emergency repair services, training of election officials and other municipal employes or provision of public educational materials for a specified period, or guaranteeing the security of the computer programs or other equipment or materials to be utilized with the system to prevent election fraud, or such other

guarantees as the municipality determines to be appropriate.

History: 1979 c. 311.

5.93 Administration. The board may adopt reasonable rules for the administration of this subchapter.

History: 1979 c. 311.

5.94 Sample ballot labels and cards; publication. When an electronic voting system employing a ballot label and ballot card is used, the county and municipal clerk of the county and municipality in which the polling place designated for use of the system is located shall cause to be published, in the type B notices, a true actual-size copy of the ballot label and ballot card containing the names of offices and candidates and statements of measures to be voted on, as nearly as possible, in the form in which they will appear on the official ballot label and ballot card on election day. The notice may be published as a newspaper insert. Municipal clerks may post the notice if the remainder of the type B notice is posted.

History: 1979 c. 311.

5.95 Elector information. The board shall prescribe information to electors in municipalities and counties using various types of electronic voting systems to be published in lieu of the information specified in s. 10.02 (3) in type B notices whenever the type B notice information is inapplicable.

History: 1979 c. 311.