

CHAPTER 7

ELECTION OFFICIALS; BOARDS; SELECTION AND DUTIES; CANVASSING

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Cross-reference: See definitions in s. 5.02.

SUBCHAPTER I

SELECTION AND DUTIES

7.03 Compensation of election officials and trainees.

(1) (a) Except as authorized under this paragraph, a reasonable daily compensation shall be paid to each inspector, voting machine custodian, automatic tabulating equipment technician, member of a board of canvassers, messenger, and tabulator who is employed and performing duties under chs. 5 to 12. Daily compensation shall also be provided to officials and trainees for attendance at training programs conducted by the board under s. 7.31. Alternatively, such election officials and trainees may be paid by the hour at a proportionate rate for each hour actually worked. Any election official or trainee may choose to volunteer his or her services by filing with the municipal clerk of the municipality in which he or she serves a written declination to accept compensation. The volunteer status of the election official or trainee remains effective until the official or trainee files a written revocation with the municipal clerk.

(b) Except as provided in par. (bm), any compensation owed shall be paid by the municipality in which the election is held, except that any compensation payable to a technician, messenger, tabulator, or member of the board of canvassers who is employed to perform services for the county shall be paid by the county and compensation payable to any messenger or tabulator who is employed to perform services for the state shall be paid by the board.

(bm) Whenever a special election is called by a county or by a school district, a technical college district, a sewerage district, a sanitary district, or a public inland lake protection and rehabilitation district, the county or district shall pay the compensation of election officials performing duties in those municipalities, as determined under sub. (2).

(c) If a central counting location serving more than one municipality is utilized under s. 7.51 (1), the cost of compensation of election officials at the location shall be proportionately divided between the municipalities utilizing the location, except that if all municipalities within a county utilize the location, the compensation shall be paid by the county.

(d) Except as otherwise provided in par. (a), special registration deputies appointed under s. 6.55 (6), special voting deputies appointed under s. 6.875 (4) and officials and trainees who attend training sessions under s. 7.15 (1) (e) or 7.25 (5) may also be com-

pensated by the municipality where they serve at the option of the municipality.

(2) The amount of compensation of election officials, when authorized or required, shall be fixed by the appropriate county board of supervisors, municipal governing body, or municipal board of election commissioners in cities over 500,000 population. The board shall fix the amount to be paid any person employed to perform duties for the state. If the board employs an individual to perform duties which are the responsibility of a county or municipality, the board shall charge the expense to the county or municipality.

History: 1973 c. 334 s. 57; 1977 c. 394, 427; 1979 c. 89, 260, 311, 355; 1983 a. 484; 1985 a. 304; 1987 a. 111, 391; 1993 a. 399; 2001 a. 16, 109; 2003 a. 143.

7.08 Elections board. In addition to its duties for ballot arrangement under ch. 5 and date and notice requirements under ch. 10, the board shall:

(1) **ELECTION FORMS, VOTING APPARATUS.** (a) Prescribe all official ballot forms necessary under chs. 5 to 12 and revise the official ballot forms to harmonize with legislation and the current official status of the political parties whenever necessary. The board shall provide one copy of each ballot form without charge to each county and municipal clerk and board of election commissioners. The board shall distribute or arrange for distribution of additional copies. The prescribed forms shall be substantially followed in all elections under chs. 5 to 12.

(b) Prescribe the necessary standard sample forms and ballot containers to make the canvass, returns, statements and tally sheet statements for all elections the results of which are reportable to the board under s. 7.60 (4) (a), and all other materials as it deems necessary to conduct the elections. The sample forms shall contain the necessary certificates of the inspectors and canvassers with notes explaining their use and statutory basis.

(c) Prescribe forms required by ss. 6.24 (3) and (4), 6.30 (4), 6.33 (1), 6.40 (1) (a), 6.47 (1) (a) 2. and (3), 6.55 (2) and (3), and 6.86 (2) and (3). All such forms shall contain a statement of the penalty applicable to false or fraudulent registration or voting through use of the form. Forms are not required to be furnished by the board.

(d) Promulgate rules for the administration of the statutory requirements for voting machines and electronic voting systems and any other voting apparatus which may be introduced in this state for use at elections. Pursuant to such responsibility, the board may obtain assistance from competent persons to check the machines, systems and apparatus and approve for use those types meeting the statutory requirements and shall establish reasonable compensation for persons performing duties under this paragraph.

(2) CERTIFIED LISTS. (a) As soon as possible after the closing date for filing nomination papers or after the canvass of the primary vote, but no later than the deadlines established in s. 10.06, transmit to each county clerk a certified list of all candidates on file in its office for which electors in that county may vote. The list shall designate the order of arrangement and contain each candidate's first name, middle initial or initials and last name, unless the candidate on his or her nomination papers or declaration of candidacy specifies that the middle initial be deleted, that a full middle name or former legal surname be substituted for the middle initial, that an initial be substituted for the candidate's first name or that a nickname be substituted for a first or middle name or for a first initial or middle initial or initials, but no other abbreviations or titles are permitted. The list shall also include each candidate's residence and post-office address; the office for which the person is a candidate; and, the party or principle the candidate represents, if any, in 5 words or less. Names of candidates nominated under s. 7.38 or 8.35 shall be certified by the board upon filing of the necessary papers with it. At any time prior to an election, the board may transmit an amended certification if a candidate dies or is determined not to qualify for ballot placement.

(b) The certified list of candidates for president and vice president nominated at a national convention by a party entitled to a September primary ballot or for whom electors have been nominated under s. 8.20 shall be sent as soon as possible after the closing date for filing nomination papers, but no later than the deadlines established in s. 10.06.

(c) As soon as possible after the canvass of the spring and September primary votes, but no later than the first Tuesday in March and the 4th Tuesday in September, transmit to the state treasurer a certified list of all eligible candidates for state office who have filed applications under s. 11.50 (2) and whom the board determines to be eligible to receive payments from the Wisconsin election campaign fund. The list shall contain each candidate's name, the mailing address indicated upon the candidate's registration form, the office for which the individual is a candidate and the party or principle which he or she represents, if any.

NOTE: Par. (c) was amended eff. 7–1–03 by 2001 Wis. Act 109 as shown below. Act 109, s. 9115, provided that if any treatments by Act 109 listed in s. 9115, including the treatment of this provision, was held to be unconstitutional by a court, then all of the listed treatments are void. The United States District Court for the Western District of Wisconsin in *Wisconsin Realtors Assoc. v. Ponto*, 233 F. Supp. 2d 1078 (2002), found the treatment of certain listed provisions unconstitutional, rendering the treatment of this provision void.

(c) As soon as possible after the canvass of the spring and September primary votes, but no later than the first Tuesday in March and the 4th Tuesday in September, transmit to the state treasurer a certified list of all eligible candidates for state office who have filed applications under s. 11.50 (2) and whom the board determines to be eligible to receive payments from the Wisconsin election campaign fund, together with a list of eligible political parties that are authorized to use grants from the Wisconsin election campaign fund to make contributions under s. 11.50 (2s) (f) to those candidates. The board shall also electronically transmit a similar list of candidates who the board determines are eligible to receive a grant under s. 11.50 (4) (bg) or (br) within 24 hours after any candidate qualifies to receive such a grant. The list shall contain each candidate's name, the mailing address indicated upon the candidate's registration form, the office for which the individual is a candidate and the party or principle which he or she represents, if any, or the name of the eligible political party and the mailing address indicated on the party's registration form.

(cm) As soon as possible after the canvass of a special primary, or the date that the primary would be held, if required, transmit to the state treasurer a certified list of all eligible candidates for state office who have filed applications under s. 11.50 (2) and whom the board determines to be eligible to receive a grant from the Wisconsin election campaign fund prior to the election. The board shall also transmit a similar list of candidates, if any, who have filed applications under s. 11.50 (2) and whom the board determines to be eligible to receive a grant under s. 11.50 (1) (a) 2. after the special election. The list shall contain each candidate's name, the mailing address indicated upon the candidate's registration form, the office for which the individual is a candidate and the party or principle which he or she represents, if any.

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(cm) As soon as possible after the canvass of a special primary, or the date that the primary would be held, if required, transmit to the state treasurer a certified list of all eligible candidates for state office who have filed applications under s. 11.50 (2) and whom the board determines to be eligible to receive a grant from the Wisconsin election campaign fund prior to the election. The board shall also transmit a similar list of candidates, if any, who have filed applications under s. 11.50 (2) and whom the board determines to be eligible to receive a grant under s. 11.50 (1) (a) 1. b. after the special election. In addition, the board shall transmit at the same time a list of eligible political parties that are authorized to use grants from the Wisconsin election campaign fund to make contributions under s. 11.50 (2s) (f) to candidates of those parties whose names are certified under this paragraph. The board shall electronically transmit a similar list of candidates who the board determines are eligible to receive a grant under s. 11.50 (4) (bg) or (br) within 24 hours after any candidate qualifies to receive such a grant. The list shall contain each candidate's name, the mailing address indicated upon the candidate's registration form, the office for which the individual is a candidate and the party or principle which he or she represents, if any or the name of the eligible political party and the mailing address indicated on the party's registration form.

(3) ELECTION MANUAL. Prepare and publish separate from the election laws an election manual written so as to be easily understood by the general public explaining the duties of the election officials, together with notes and references to the statutes as the board considers advisable. The election manual shall:

(a) Be compiled by the board.

(b) Emphasize the fact that election officials should help, not hinder, electors in exercising their voting rights.

(c) Be subject to periodic review and revision when necessary.

(4) ELECTION LAWS. Publish the election laws. The board shall sell or distribute or arrange for the sale or distribution of copies of the election laws to county and municipal clerks and boards of election commissioners and members of the public.

(5) DISTRICT MAPS. Distribute, upon request and free of charge, to any candidate for representative in Congress, state senator, or representative to the assembly a copy of the map or maps received under s. 16.96 (3) (b) showing district boundaries.

(6) ENFORCEMENT OF FEDERAL VOTING SYSTEM STANDARDS. Following each general election, audit the performance of each voting system used in this state to determine the error rate of the system in counting ballots that are validly cast by electors. If the error rate exceeds the rate permitted under standards of the federal election commission in effect on October 29, 2002, the board shall take remedial action and order remedial action to be taken by affected counties and municipalities to ensure compliance with the standards. Each county and municipality shall comply with any order received under this subsection.

NOTE: Sub. (6) is created eff. 1–1–06 by 2003 Wis. Act 265.

(7) VOTING SYSTEM TRANSITIONAL ASSISTANCE. From the appropriation under s. 20.510 (1) (c), provide assistance to municipalities that used punch card electronic voting systems at the 2001 spring election to enable the municipalities to employ another type of electronic voting system, and provide training for election officials in the use of replacement systems.

NOTE: Sub. (7) is repealed eff. 7–1–08 by 2001 Wis. Act 16.

(8) ELECTORS VOTING WITHOUT IDENTIFICATION OR PURSUANT TO COURT ORDER. Prescribe a written notice to be distributed to electors who vote under s. 6.96 or 6.97 that informs an elector how to obtain information regarding whether his or her vote has been counted, and if the vote will not be counted, the reason that the vote will not be counted.

NOTE: Sub. (8) is created eff. 1–1–06 by 2003 Wis. Act 265.

History: 1971 c. 242; 1973 c. 334 s. 6, 57; 1975 c. 85, 93, 94, 199; 1977 c. 29, 107, 394, 427; 1979 c. 89, 177, 260, 311; 1981 c. 377; 1983 a. 51, 484; 1985 a. 120, 304; 1989 a. 192; 1993 a. 140; 1995 a. 16 s. 2; 1997 a. 27; 1999 a. 49, 182; 2001 a. 16, 38, 107, 109; 2003 a. 265.

7.10 County clerks. (1) ELECTION SUPPLIES AND BALLOTS.

(a) Each county clerk shall provide ballots for every election in the county for all national, state and county offices, including metropolitan sewerage commission elections under s. 200.09 (11) (am), for municipal judges elected under s. 755.01 (4) and for state

and county referenda. The official and sample ballots shall be prepared in substantially the same form as those prescribed by the board under s. 7.08 (1) (a).

(b) The county clerk shall supply sufficient election supplies for national, state and county elections to municipalities within the county. The election supplies shall be enclosed in the sealed package containing the official ballots and delivered to the municipal clerk.

(c) With county board approval any county clerk may purchase or print the official forms of nomination papers for distribution to any person at cost or free.

(2) PREPARING BALLOTS. The county clerk shall prepare copy for the official ballots immediately upon receipt of the certified list of candidates' names from the board. Names certified by the board shall be arranged in the order certified. The county clerk shall place the names of all candidates filed in the clerk's office or certified to the clerk by the board on the proper ballot or ballots under the appropriate office and party titles.

(3) TIME SCHEDULE. (a) The county clerk shall distribute the ballots to the municipal clerks no later than 31 days before each September primary and general election and no later than 22 days before each other primary and election. Election forms prepared by the board shall be distributed at the same time. If the board transmits an amended certification under s. 7.08 (2) (a) or if the board or a court orders a ballot error to be corrected under s. 5.06 (6) or 5.72 (3) after ballots have been distributed, the county clerk shall distribute corrected ballots to the municipal clerks as soon as possible.

(b) The county clerk shall distribute an adequate supply of separately wrapped official ballots to each municipal clerk so the municipal clerk may supply ballots to absent elector applicants. The remaining ballots shall be sent in separately sealed packages clearly designating the ward for which each is intended and the approximate number of ballots of each kind enclosed.

(4) RESOLVING NOTICE DOUBTS. When in doubt as to compliance with the statutory requirements for election notices or the correct fees to be paid for them, the county clerk may consult the board.

(6) MUNICIPAL JUDGE; CERTIFIED LIST. If candidates for the office of a municipal judge who is elected under s. 755.01 (4) file nomination papers in the office of the county clerk and any municipality served by the judge prepares its own ballots for voting machines or an electronic voting system, the county clerk shall certify to the municipal clerk of that municipality the names of the candidates for judge as soon as possible after the last day for filing nomination papers and after certification by the county board of canvassers of the results of any primary election.

(7) VOTER EDUCATION. Each county clerk shall assist the board in conducting educational programs under s. 5.05 (12) to inform electors about the voting process.

NOTE: Sub. (7) is created eff. 1–1–06 by 2003 Wis. Act 265.

(8) FREE ELECTION INFORMATION EXCHANGE. Each county clerk shall assist the board and municipal clerks in maintaining toll-free telephone lines and other free access systems under s. 5.05 (13) for exchange of voting information.

(9) TRAINING OF ELECTION OFFICIALS. Each county clerk shall assist the board in the training of election officials under ss. 5.05 (7) and 7.31.

(10) INFORMATION TO BOARD. Each county clerk shall provide to the board any information requested under s. 5.05 (14).

History: 1971 c. 304 s. 29 (2); 1973 c. 280; 1973 c. 334 s. 57; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 221, 260, 311, 355; 1981 c. 377; 1983 a. 484; 1985 a. 89, 304; 1991 a. 316; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 107; 2003 a. 265.

7.11 Menominee county; town elections. The clerk shall prepare a ballot distinguishing between supervisors elected at large and by ward in any county having only one town with a part of the county board members elected by wards.

History: 1971 c. 304 s. 29 (2); 1973 c. 334.

7.15 Municipal clerks. (1) SUPERVISE REGISTRATION AND ELECTIONS. Each municipal clerk has charge and supervision of elections and registration in the municipality. The clerk shall perform the following duties and any others which may be necessary to properly conduct elections or registration:

(a) Equip polling places.

(b) Provide for the purchase and maintenance of election equipment.

(c) Prepare ballots for municipal elections, and distribute ballots and provide other supplies for conducting all elections. The municipal clerk shall deliver the ballots to the polling places before the polls open.

(cm) Prepare official absentee ballots for delivery to electors requesting them, and send an official absentee ballot to each elector who has requested one no later than the 30th day before each September primary and general election and no later than the 21st day before each other primary and election if the request is made before that day; otherwise, the municipal clerk shall send an official absentee ballot within one day of the time the elector's request is received.

(cs) Prepare write-in absentee ballots for delivery to military electors under s. 6.25 (2) at each election, and prepare write-in absentee ballots for delivery to overseas electors under s. 6.25 (3) at each election for national office, no later than the 90th day before the election, or as soon as possible after the offices to be contested at the election are known, whichever is later, and distribute the ballots to each military or overseas elector after ballots are available or within one day after a request is received, whichever is later, but beginning on the day that official absentee ballots become available, the clerk shall not mail write-in absentee ballots and shall substitute official absentee ballots for any write-in absentee ballots requested.

(d) Prepare the necessary notices and publications in connection with the conduct of elections or registrations.

(e) In coordination with the board, instruct election officials in their duties, calling them together whenever advisable, advise them of changes in laws, rules and procedures affecting the performance of their duties, and administer examinations as authorized under s. 7.30 (2) (c). The clerk shall assure that officials who serve at polling places where an electronic voting system is used are familiar with the system and competent to instruct electors in its proper use. The clerk shall inspect systematically and thoroughly the conduct of elections in the municipality so that elections are honestly, efficiently and uniformly conducted.

(f) Discharge election officials for improper conduct or willful neglect of duties.

(g) Report suspected election frauds, irregularities or violations of which the clerk has knowledge to the district attorney.

(h) Review, examine and certify the sufficiency and validity of petitions and nomination papers.

(i) Direct how and when to destroy the contents of the blank ballot boxes and unused election materials.

(j) Send an absentee ballot automatically to each person making an authorized request therefor in accordance with s. 6.22 (4) or 6.86 (2).

(k) Reassign inspectors appointed to serve at one polling place to another polling place within the municipality whenever necessary to assure adequate staffing at all polling places. No such reassignment may have the effect of eliminating representation at a polling place by one of the political parties entitled to nominate inspectors under s. 7.30 (2) (a).

(2) MUNICIPAL ELECTION DUTIES. (a) In municipal elections, the municipal clerks shall perform the duties prescribed for county clerks by s. 7.10.

(b) Cities over 500,000 population may prepare their own official and sample ballots. Official ballots not utilized as absentee ballots shall be printed so they are ready at least 2 days before the election.

(c) With the consent of the county clerk, municipalities may prepare their own ballots whenever voting machines or electronic voting systems are used in elections where candidates for both local offices and national, state or county offices appear on the ballot. This paragraph does not apply to cities under par. (b).

(d) Whenever the governing body of any municipality submits any question to a vote of the electors or whenever a proper recall petition and certificate are filed under s. 9.10, the municipal clerk shall issue a call for the election and prepare and distribute ballots as required in the authorization of submission or as provided in s. 9.10. The date of the referendum shall be fixed by the municipal clerk or board of election commissioners unless otherwise provided by law or unless the governing body fixes a date. The ballot for any referendum shall conform to s. 5.64 (2). If there is already an official municipal referendum ballot for the election, the question may appear on the same ballot.

(3) BALLOT SUPPLY; SAMPLE BALLOTS. (a) Where voting machines are used or where electronic voting systems are employed, the municipal clerk shall provide at least 2 duplicate sample ballots for each ward in diagram form showing the board or screen inside each voting machine or the front of each ballot as it will appear in the voting machines or booths on election day.

(b) Sample ballots and voting machine ballots shall be furnished to the officials in the ward or election district at least one day before each election.

(4) RECORDING ELECTORS. Within 30 days after each election, the municipal clerk shall enter on the registration list under the name of each elector of the municipality who has voted at the election an indication of the date of the election in which the elector voted.

(5) RECORD OF BALLOTS RECEIVED. Each municipal clerk shall keep a record of when and in what condition the packages containing the ballots were received from the county clerk. The municipal clerk shall deliver to the proper officials the unopened packages of ballots the day before the election.

(6) SUBSTITUTE BALLOTS. (a) The municipal clerk shall provide substitute paper ballots in substantially the form of the original ballots whenever the necessary original ballots are not delivered to the municipality, are destroyed, are lost or stolen after delivery, are not ready for distribution or the supply is exhausted during polling hours. The municipal clerk may also provide substitute paper ballots, together with ballot boxes and voting booths, whenever a voting machine or electronic voting system is rendered inoperable by a malfunction which occurs within 24 hours of the time set for opening of the polls. Paper ballots may be cast only in accordance with the procedures prescribed in ss. 6.80 (2) and 7.37 (4).

(b) Upon receiving the substitute paper ballots accompanied by a statement made under oath by the municipal clerk that the ballots have been prepared and furnished by the clerk to replace the original ballots which are not available, or to substitute for a voting machine or electronic voting system which has been rendered inoperable by a malfunction which occurred within 72 hours of the time set for opening of the polls, the election officials shall use the substitute ballots in the same manner as if they had been original ballots.

(7) REQUEST CANVASS ASSISTANCE. The municipal clerk may request all election officials to assist the inspectors in canvassing the votes received at the respective polling places.

(8) RESOLVING NOTICE DOUBTS. When in doubt as to compliance with the statutory requirements for election notices or the correct fees to be paid for them, the municipal clerk may consult the board.

(9) VOTER EDUCATION. Each municipal clerk shall assist the board in conducting educational programs under s. 5.05 (12) to inform electors about the voting process.

NOTE: Sub. (9) is created eff. 1-1-06 by 2003 Wis. Act 265.

(10) FREE ELECTION INFORMATION EXCHANGE. Each municipal clerk shall assist the board in maintaining toll-free telephone lines

and any other free access systems under s. 5.05 (13) for exchange of voting information.

(11) TRAINING OF ELECTION OFFICIALS. Each municipal clerk shall assist the board in the training of election officials under ss. 5.05 (7) and 7.31.

(12) FREE VOTE COUNTING INFORMATION. Each municipal clerk shall maintain a free access information system under which an elector who votes under s. 6.96 or 6.97 may ascertain current information concerning whether the elector's vote has been counted, and if the vote will not be counted, the reason that it will not be counted.

(13) INFORMATION TO BOARD. Each municipal clerk shall provide to the board any information requested under s. 5.05 (14).

(14) VOTING ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES. Each municipal clerk shall make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible.

History: 1971 c. 304 s. 29 (2); 1973 c. 334 s. 57; 1975 c. 85 ss. 50, 65; 1975 c. 275, 422; 1977 c. 283; 1977 c. 394 s. 54; 1977 c. 427, 447; 1979 c. 260, 311; 1981 c. 391; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1991 a. 316; 1999 a. 182; 2001 a. 16; 2003 a. 265.

7.20 Board of election commissioners. (1) A municipal board of election commissioners and a county board of election commissioners shall be established in every city and county over 500,000 population.

(2) Each board of election commissioners shall consist of 3 members, each member being chosen from lists of at least 3 names each, selected and approved by the county committee of the 2 political parties receiving the most votes for governor in the county in the case of the county board of election commissioners, and receiving the most votes for governor in the city in the case of the city board of election commissioners, in the last general election. The county executive, for the county board of election commissioners, shall select from the list 2 persons from the majority party and one person from the next highest party in the county. The mayor, for the city board of election commissioners, shall select from the list 2 persons from the majority party and one person from the next highest party in the city.

(3) The persons chosen shall be qualified electors and residents of the state and county and, for the city board of election commissioners, of the city.

(4) Before beginning their duties as election commissioners each appointee shall take and file the official oath.

(5) Each board of election commissioners shall choose its own chairperson. An act of a majority of the board is an act of the board.

(6) The election commissioners shall not hold any other public office and are ineligible for any appointive or elective public office, except the office of notary public, during their term.

(7) The term of office shall be 4 years, and until successors have been commissioned and qualified, beginning on July 1 each year following a presidential election. Successors shall be appointed the same way.

History: 1973 c. 334; 1975 c. 124; 1983 a. 484 s. 172 (1); 1993 a. 184.

7.21 Election commissioners, duties and regulations.

(1) All powers and duties assigned to the municipal or county clerk or the municipal or county board of canvassers under chs. 5 to 12 shall be carried out by the municipal or county board of election commissioners or its executive director, unless specifically retained or assigned in this section or s. 7.22.

(2) The county board of election commissioners may hire an executive director who shall perform whatever duties the board assigns to him or her. The county board shall determine the salary of that executive director. Appointment and removal of that executive director shall be subject to civil service standards. An executive director of the city board of election commissioners shall be appointed under s. 62.51.

(2m) The county board of election commissioners may:

(a) Bring civil actions to require forfeitures under s. 11.60 for any violation of ch. 11. Forfeiture actions brought by the county board of election commissioners may concern only violations with respect to reports or statements required by law to be filed with it. The county board of election commissioners 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 county board of election commissioners, 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. Any settlement made by the county board of election commissioners shall be in such amount as to deprive the alleged violator of any benefit of his or her wrongdoing and may contain a penal component to serve as a deterrent to future violations. In settling actions or proposed actions, the county board of election commissioners shall treat comparable situations in a comparable manner and shall ensure that any settlement bears a reasonable relationship to the severity of the offense or alleged offense. Forfeiture actions brought by the county board of election commissioners shall be brought in the circuit court for the county served by the board of election commissioners.

(b) In the discharge of its authority under par. (a) 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 county board of election commissioners of probable cause to believe that 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 county board of election commissioners may cause the deposition of witnesses to be taken in the manner prescribed for taking depositions in civil actions in circuit court.

(c) Delegate to its executive director the authority to issue a subpoena or apply for a search warrant under par. (b), subject to such limitations as the county board of election commissioners considers appropriate.

(3) The board of election commissioners is authorized to employ additional clerical assistants to carry out its necessary duties. The assistants' salaries shall be fixed by the governing body of the municipality or county.

(4) The board of election commissioners may procure a seal to authenticate official papers and documents.

(5) The city council and county board shall provide office space in the city hall and county courthouse, respectively, pay all the necessary expenses, cooperate with the board of election commissioners, provide storage space for the election equipment and supplies and assist with the moving and conducting of the elections as necessary.

History: 1973 c. 334; 1979 c. 89; 1983 a. 36; 1983 a. 484 s. 172 (1), (2); 1985 a. 304 ss. 81, 155; 1987 a. 382; 1999 a. 150 s. 672; 1999 a. 182.

7.22 Municipal board of election commissioners.

(1) The common council shall determine the salaries of the election commissioners and shall include sufficient funds in its budget to allow the municipal board of election commissioners to fulfill its duties.

(2) All expenses shall be paid upon order of the municipal board of election commissioners, signed by the chairperson and executive director and countersigned by the city comptroller. The orders, made payable to persons in whose favor issued, shall be the vouchers for the city treasurer for the payment of the orders.

(3) The municipal board of election commissioners shall prepare and furnish copies of all registrations, books, maps, instruc-

tions, and forms pertaining to the rules for registration and conducting elections for the use and guidance of the election officials.

(4) The municipal board of election commissioners shall compile and publish a biennial report, containing election statistics and returns of all primaries and elections held within their city and county. Copies of the same shall be distributed to persons in such quantities as the municipal board of election commissioners deems proper.

(5) The chief of police shall station a police officer at polling places designated by the municipal board of election commissioners for each election.

History: 1973 c. 334; 1977 c. 51; 1983 a. 484 s. 172 (1); 1985 a. 304 s. 155; 1993 a. 184; 2001 a. 107.

7.23 Destruction of election materials. (1) All materials and supplies associated with an election, except as provided in sub. (2), may be destroyed according to the following schedule:

(a) Any unused materials after an election and the contents of the blank ballot box after a primary may be destroyed at a time and in a manner designated by the appropriate clerk.

(b) Voting machine recorders essential for proper operation of voting machines may be cleared and reactivated 14 days after any primary and 21 days after any other election.

(c) Registration forms of electors whose registrations are changed to ineligible status under s. 6.50 (7) may be destroyed 4 years after the change, unless an elector becomes eligible again during that period.

(d) Except as provided in s. 11.21 (11) (a), financial reports may be destroyed 6 years after the date of receipt. Financial registration statements may be destroyed 6 years after termination of registration.

(e) Poll lists created at a nonpartisan primary or election may be destroyed 2 years after the primary or election at which they were created and poll lists created at a partisan primary or election may be destroyed 4 years after the primary or election at which they were created.

(f) Except as authorized in pars. (b) and (g), ballots, applications for absentee ballots, registration forms, or other records and papers requisite to voting at any federal election, other than registration cards, may be destroyed after 22 months.

(g) Detachable recording units and compartments for use with electronic voting machines may be cleared or erased 14 days after any primary and 21 days after any other election. Before clearing or erasing the units or compartments, a municipal clerk shall transfer the data contained in the units or compartments to a disk or other recording medium which may be erased or destroyed 22 months after the election to which the data relates.

(h) Ballots may be destroyed 30 days after any election.

(i) Official canvasses may be destroyed 10 years after the election to which they relate.

(j) Election notices, and proofs of publication and correspondence filed in connection with such notices may be destroyed one year after the date of the election to which they relate.

(k) All other materials and supplies associated with an election may be destroyed 90 days after the election.

(2) If there is a demand for a recount, notice of an election contest or any contest or litigation pending with respect to an election, materials may be destroyed and recorders, units or compartments may be cleared or erased only by order of the judge in whose court litigation is pending or if no litigation is pending, by order of any circuit judge for the affected jurisdiction. Upon petition of the attorney general or a district attorney or U.S. attorney for the affected jurisdiction, a circuit judge for the affected jurisdiction may order that specified materials not be destroyed or that specified recorders, units or compartments not be cleared or erased as otherwise authorized under this subsection until the court so permits. The governor may by order permit the clearing of voting machine recorders on machines needed to conduct a special elec-

tion prior to the time authorized under this subsection, unless there is a demand for recount, notice of an election contest or a contest or litigation pending, or a court of record orders that the recorders not be cleared.

History: 1973 c. 334; 1975 c. 85, 200; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 260 ss. 42, 94; 1979 c. 311, 328; 1983 a. 484 ss. 60 to 63, 174; 1985 a. 304 ss. 82, 143; 1987 a. 391; 2003 a. 265.

7.24 Title to election materials. The filing of a nomination paper, ballot application, financial report, affidavit, or other form or statement with the appropriate official or agency responsible for accepting such materials under chs. 5 to 12 irrevocably transfers the legal title to such official or agency, regardless of the sufficiency of the filing. The official or agency shall retain all election materials until destruction or other disposition is authorized under s. 7.23.

History: 1975 c. 93; 1979 c. 89.

7.25 Voting machine officials' duties. (1) The municipal clerk of each municipality in which voting machines are used is responsible for the proper ballot being placed on each machine, the sample ballots, setting, adjusting, and putting the machine in order to use in voting when delivered to the ward. For the purpose of labeling, setting, adjusting and putting the voting machines in order, one or more competent voting machine custodians may be employed.

(2) Under the direction of the municipal clerk, the custodian shall label or insert, set, adjust, put in order and deliver the machines with all necessary furniture and appliances to the rooms where the election will be held for each ward at least one hour before the time set for opening the polls on election day.

(3) In preparing a voting machine for an election according to the directions furnished, the custodian shall arrange the machine and ballot so both will meet all the requirements for voting and counting the election in the manner provided for in machine construction.

(4) When a voting machine is properly prepared for an election and delivered to the election ward, it shall be locked and sealed against any movement and the governing body or board of election commissioners shall provide proper protection to prevent tampering with the machines. The custodians preparing the machines shall deliver the keys for the machines to the municipal clerk or executive director of the board of election commissioners together with a written report of each machine's condition.

(5) Before an election each election official serving at a polling place where voting machines are used shall be instructed in their use and their duties in connection with them by the municipal clerk, who shall call as many meetings to give instructions to the election officials as are necessary. Officials and trainees may be compensated for attendance. Any person who does not understand the machines shall not be paid nor be allowed to serve.

(6) (a) Where voting machines are used, the election officials for each ward shall meet at their proper polling place at least 15 minutes before the time set for opening of the polls to arrange the voting machines and furniture to properly conduct the election.

(b) 1. Before opening the polls, the election officials shall do all of the following:

a. Compare the ballots on the machines with the sample ballots furnished by the municipal clerk to ensure that the names, numbers, and letters on the machine ballots and sample ballots agree.

b. Examine the seal on each machine to see that the seal has not been broken.

c. Examine the counter on each machine to see that each counter registers 000.

2. If any counter on any machine does not register 000, the counter number and the number showing on the counter shall be recorded, signed by all the election officials, and a copy shall be conspicuously posted by the inspectors at the polling place during polling hours.

(c) After the inspection under par. (b), on the blanks furnished, they shall certify the condition of each voting machine and its counters. Each form shall be signed by each election official. After the election, one copy of each machine's certification shall be delivered with each copy of the election returns.

History: 1971 c. 304 s. 29 (2); 1977 c. 427; 1979 c. 311; 1985 a. 304; 2001 a. 107.

7.30 Appointment of election officials. (1) NUMBER. There shall be 7 inspectors for each polling place at each election. In municipalities where voting machines are used, the municipal governing body may reduce the number of inspectors to 5. A municipal governing body may provide for the appointment of additional inspectors whenever more than one voting machine is used or wards are combined under s. 5.15 (6) (b). A municipal governing body may provide by ordinance for the selection of alternate officials or the selection of 2 or more sets of officials to work at different times on election day, and may permit the municipal clerk or board of election commissioners to establish different working hours for different officials assigned to the same polling place. Alternate officials shall also be appointed in a number sufficient to maintain adequate staffing of polling places. Unless officials are appointed without regard to party affiliation under sub. (4) (c), additional officials shall be appointed in such a manner that the total number of officials is an odd number and the predominant party under sub. (2) is represented by one more official than the other party.

(2) QUALIFICATIONS AND PROCEDURE. (a) Only election officials appointed under this section may conduct an election. Except as authorized in s. 7.15 (1) (k), each inspector shall be a qualified elector of the ward or wards, or the election district, for which the polling place is established. Special registration deputies appointed under s. 6.55 (6) and election officials who are appointed to fill a vacancy under par. (b) need not be a resident of the ward or wards, or the election district, but shall be a resident of the municipality. Special registration deputies may be appointed to serve more than one polling place. All officials shall be able to read and write the English language, be capable, be of good understanding, and may not be a candidate for any office to be voted for at an election at which they serve. In 1st class cities, they may hold no public office other than notary public. Except as authorized under sub. (4) (c), all inspectors shall be affiliated with one of the 2 recognized political parties which received the largest number of votes for president, or governor in nonpresidential general election years, in the ward or combination of wards served by the polling place at the last election. The party which received the largest number of votes is entitled to one more inspector than the party receiving the next largest number of votes at each polling place. The same election officials may serve the electors of more than one ward where wards are combined under s. 5.15 (6) (b). If a municipality is not divided into wards, the ward requirements in this paragraph apply to the municipality at large.

(am) Except as otherwise provided in this paragraph, a pupil who is 16 or 17 years of age, who is enrolled in grades 9 to 12 in a public or private school, and who has at least a 3.0 grade point average or the equivalent may serve as an inspector at the polling place serving the pupil's residence, with the approval of the pupil's parent or guardian and of the principal of the school in which the pupil is enrolled. A pupil may serve as an inspector at a polling place under this paragraph only if at least one election official at the polling place other than the chief inspector is a qualified elector of this state. No pupil may serve as chief inspector at a polling place under this paragraph. Before appointment by any municipality of a pupil as an inspector under this paragraph, the municipal clerk shall obtain written authorization from the pupil's parent or guardian and from the principal of the school where the pupil is enrolled for the pupil to serve for the entire term for which he or she is appointed. Upon appointment of a pupil to serve as an inspector, the municipal clerk shall notify the principal of the school where the pupil is enrolled of the date of expiration of the pupil's term of office.

(b) When a vacancy occurs, the vacancy shall be filled by appointment of the municipal clerk. The vacancy shall be filled from the remaining names on the lists submitted under sub. (4) or from additional names submitted by the chairperson of the county party committee of the appropriate party under sub. (4) whenever names are submitted under sub. (4) (d). If the vacancy is due to candidacy, sickness or any other temporary cause, the appointment shall be a temporary appointment and effective only for the election at which the temporary vacancy occurs. The same qualifications shall be required of persons who fill vacancies. Vacancies may be filled in cases of emergency or because of time limitations by a person from another aldermanic district or ward within the municipality.

(c) The governing body of any municipality may require all persons serving as election officials to prove their ability to read and write English and to have a general knowledge of the election laws. Examinations may be given to prove the qualifications can be met.

(3) TABULATORS. (a) Not less than 30 days before any election the governing body or board of election commissioners of any municipality, by resolution, may authorize the municipal clerk or executive director of the board of election commissioners to select and employ tabulators for any election. Such authorization applies to the elections specified in the resolution, and if not specified, applies until the authorization is modified or revoked.

(b) The tabulators shall assist and be under the direction of the election inspectors after the close of the polls.

(4) APPOINTMENTS. (a) Except in cities where there is a board of election commissioners, the mayor, president or board chairperson of each municipality shall nominate to the governing body no later than their last regular meeting in December of each even-numbered year the necessary election officials for each polling place. If no regular meeting is scheduled, the mayor, president or chairperson shall call a special meeting for the purpose of considering nominations no later than December 31.

(b) The 2 dominant parties, under sub. (2), are each responsible for submitting a list of names from which the appointees shall be chosen.

1. In cities where there is a board of election commissioners, the aldermanic district committeemen or committeewomen under s. 8.17 of each of the 2 dominant recognized political parties shall submit a certified list no later than November 30 of each even-numbered year containing the names of at least as many nominees as there are inspectors from that party for each of the voting wards in the aldermanic district. The chairperson may designate any individual whose name is submitted as a first choice nominee. The board of election commissioners shall appoint, no later than December 31 of even-numbered years, at least 5 inspectors for each ward. The board of election commissioners shall appoint all first choice nominees for so long as positions are available, unless nonappointment is authorized under par. (e), and shall appoint other individuals in its discretion. The board of election commissioners may designate such alternates as it deems advisable.

2. In municipalities other than cities and villages located in counties having a population of more than 500,000, the committees organized under s. 8.17 from each of the 2 dominant parties under sub. (2) shall submit a list containing at least as many names as there are needed appointees from that party. The list shall be submitted by the chairperson of each of the 2 committees to the mayor, president or chairperson of the municipality. If committees are organized in subdivisions of a city, the list shall be submitted through the chairperson of the city committee. If there is no municipal committee, the list shall be submitted by the chairperson of the county or legislative district committee. Except as provided in par. (c), only those persons submitted by the chairperson of each committee under s. 8.17 may act as election officials. The chairperson may designate any individual whose name is submitted as a first choice nominee. The list shall contain the signature of the chairperson and secretary of the submitting committee. In cities or villages located in counties having a population of

more than 500,000, other than cities where there is a board of election commissioners, the aldermanic district or village committeeman or committeewoman for the ward or wards where each polling place is located, if there is one, shall submit a list containing at least as many names as there are needed appointees for inspector positions from the party represented by the committeeman or committeewoman. For appointments of inspectors in cities and villages where there is no aldermanic district or village committeeman or committeewoman, nominations shall proceed in the same manner as in municipalities located in counties having a population of 500,000 or less. The list shall be submitted to the mayor or president. Except as provided in par. (c), only those persons whose names are submitted as provided in this paragraph may act as election officials. The committeeman or committeewoman may designate any individual whose name is submitted as a first choice nominee. The list shall contain the signature of the aldermanic district or village committeeman or committeewoman or the chairperson of the appropriate committee. Upon submission of each nominee's name, the governing body shall appoint each first choice nominee for so long as positions are available, unless nonappointment is authorized under par. (e), and shall appoint other nominees in its discretion. If any nominee is not appointed, the mayor, president or chairperson of the municipality shall immediately nominate another person from the appropriate lists submitted and continue until the necessary number of election officials from each party is achieved at that meeting.

(c) For so long as nominees are made available by the political parties under this section, appointments may be made only from the lists of submitted nominees. If the lists are not submitted by November 30 of the year in which appointments are to be made, the board of election commissioners shall appoint, or the mayor, president or chairperson of a municipality shall nominate qualified persons whose names have not been submitted. If an insufficient number of nominees appears on the lists as of November 30, the board of election commissioners shall similarly appoint, or the mayor, president or chairperson shall similarly nominate sufficient individuals to fill the remaining vacancies. Any appointment which is made due to the lack of availability of names submitted under par. (b) may be made without regard to party affiliation.

(d) A party committee or aldermanic district or village committeeman or committeewoman under s. 8.17 may submit additional names for inclusion in its list of nominations under this section at any time for the purpose of filling vacancies that occur during a term of office. However, an appointment need at no time be delayed because of the lack of availability of party nominees.

(e) If an appointing authority believes that, for good cause, it should not appoint an individual whose name is submitted as a first choice nominee under par. (b), it may request the board to authorize nonappointment. The board may permit nonappointment of an individual for cause demonstrated by an appointing authority.

(5) OATH OF OFFICE. Within 5 days after appointment of the election officials the municipal clerk shall give each appointee notice. The appointees shall file the official oath with the municipal clerk within 10 days after the mailing of the notice. Appointees to fill vacancies or any other election official who has not filed the oath, before receiving any ballots, shall sign the oath and return it to the municipal clerk. An inspector, after taking the oath, may administer any oath required to conduct an election.

(6) OFFICE TENURE. (a) The appointed election officials shall hold office for 2 years and until their successors are appointed and qualified. They shall serve at every election held in their ward during their term of office.

(b) Prior to the first election following the appointment of the inspectors, the municipal clerk shall appoint one of the inspectors at each polling place to serve as chief inspector. No person may serve as chief inspector at any election who is not certified by the board under s. 7.31 at the time of the election. The chief inspector shall hold the position for the remainder of the term unless the

inspector is removed by the clerk or the inspector ceases to be certified under s. 7.31, except that whenever wards are combined or separated under s. 5.15 (6) (b), the municipal clerk shall appoint another inspector who is certified under s. 7.31 to serve as chief inspector at each polling place designated under s. 5.15 (6) (b). If a vacancy occurs in the position of chief inspector at any polling place, the municipal clerk shall appoint one of the other inspectors who is certified under s. 7.31 to fill the vacancy.

(c) If any election official lacks the qualifications set forth in this section, fails to attend training sessions required under s. 7.15 (1) (e) unless excused therefrom, is guilty of neglecting his or her official duties or commits official misconduct, the municipal clerk or board of election commissioners shall summarily remove the official from office and the vacancy shall be filled under sub. (2) (b).

History: 1971 c. 242; 1971 c. 304 s. 29 (1), (2); 1971 c. 336; 1973 c. 280, 334; 1975 c. 93, 101; 1977 c. 394, 427, 447; 1979 c. 89, 260, 355; 1983 a. 183, 484, 538; 1985 a. 131 s. 3; 1985 a. 304, 332; 1987 a. 391; 1989 a. 192, 359; 1995 a. 16 s. 2; 1997 a. 127; 1999 a. 182; 2001 a. 16, 109.

7.31 Training and certification of chief inspectors.

(1) The board shall, by rule, prescribe requirements for certification of individuals to serve as chief inspectors. The requirements shall not include taking an examination.

(2) No individual may serve as a chief inspector at a polling place in an election unless the individual is certified by the board to hold that office on the date of the election at which the individual serves.

(3) The board shall, upon application, issue certificates to qualified individuals who meet the requirements to be certified as chief inspectors. Each certificate shall carry an expiration date.

(4) The board shall require each individual to whom a certificate is issued under this section to meet requirements to maintain that certification. The board shall renew the certificate of any individual who requests renewal and who meets the requirements prescribed under this subsection.

(5) The board shall conduct regular training programs to ensure that individuals who are certified by the board under this section are knowledgeable concerning their authority and responsibilities. The board shall pay all costs required to conduct the training programs from the appropriation under s. 20.510 (1) (bm).

History: 2001 a. 16, 104; 2003 a. 143.

7.32 Change of election official numbers. Notwithstanding s. 7.30 (1), the governing body or board of election commissioners of any municipality may by resolution reduce the number of election officials and modify or rescind any similar previous action. No such action may reduce the number of officials at a polling place to less than 3.

History: 1977 c. 427; 1979 c. 260 s. 46; Stats. 1979 s. 7.32; 1983 a. 484; 1985 a. 304.

7.33 Service as an election official. (1) In this section:

(a) “Employee” has the meaning given under s. 101.01 (3).

(b) “Employer” has the meaning given under s. 101.01 (4).

(c) “State agency” has the meaning given under s. 20.001 (1) and includes an authority created under ch. 231, 232, 233, 234, or 237.

(2) Service as an election official under this chapter shall be mandatory upon all individuals appointed, during the full 2-year term, after which they shall be exempt from further service as an election official, under this chapter, until 3 terms of 2 years each have elapsed. Municipal clerks may grant exemptions from service at any time.

(3) Every employer shall grant to each employee who is appointed to serve as an election official a leave of absence for the entire 24-hour period of each election day in which the official serves in his or her official capacity. An employee who serves as an election official shall provide his or her employer with at least

7 days’ notice of application for a leave. The municipal clerk shall verify appointments upon request of any employer.

(4) Except as otherwise provided in this subsection, each local governmental unit, as defined in s. 16.97 (7), may, and each state agency shall, upon proper application under sub. (3), permit each of its employees to serve as an election official without loss of fringe benefits or seniority privileges earned for scheduled working hours during the period specified in sub. (3), without loss of pay for scheduled working hours during the period specified in sub. (3) except as provided in sub. (5), and without any other penalty. For employees who are included in a collective bargaining unit for which a representative is recognized or certified under subch. V of ch. 111, this subsection shall apply unless otherwise provided in a collective bargaining agreement.

(5) Any employee of a local governmental unit, as defined in s. 16.97 (7), or state agency who obtains a paid leave of absence under sub. (4) in order to serve as an election official under s. 7.30 shall certify in writing to the head of the local governmental unit or state agency by which he or she is employed the amount of compensation that the employee receives for such service. Upon receipt of the certification, the head of the local governmental unit or state agency shall deduct that amount from the employee’s pay earned for scheduled working hours during the period specified in sub. (2) when the employee is on a paid leave of absence.

(6) Each employer other than a state agency shall, upon proper application under sub. (3), permit each of its employees to serve as an election official without loss of fringe benefits or seniority privileges earned for scheduled working hours during the period specified in sub. (3), and shall not impose any other penalty upon an employee who serves as an election official, except the employer need not pay wages to an employee for time not worked while the employee is serving as an election official.

History: 1977 c. 398; 1979 c. 260 s. 44; Stats. 1979 s. 7.33; 1987 a. 111; 1987 a. 391 ss. 37m, 41g, 41r; 1989 a. 56 s. 259; 1995 a. 27; 2001 a. 16, 104, 109; 2003 a. 33.

7.36 Chief inspector’s duties. Subject to the supervision of the municipal clerk or executive director of the board of election commissioners, the chief inspector shall direct the conduct of activities assigned to the inspectors at the polling place. The chief inspector shall refer any question as to the proper procedure to be employed in carrying out the inspectors’ duties to the municipal clerk or executive director.

History: 1985 a. 304.

7.37 Inspectors’ duties. (1) ADJOURN TO ANOTHER LOCATION. Whenever it becomes impossible or inconvenient to hold an election at the designated location, the inspectors, after assembling at or as near the designated polling place as practicable and before receiving any votes, may adjourn to the nearest convenient place for holding the election. The inspectors shall make a proclamation of the move and a law enforcement officer or other proper person designated by the municipal clerk shall be stationed at or as near as possible to the place where the adjournment was made, to notify all electors of the place to which the election adjourned. At the new location the inspectors shall immediately proceed with the election.

(2) PRESERVE ORDER. The inspectors shall possess full authority to maintain order and to enforce obedience to their lawful commands during the election and the canvass of the votes. They shall permit only one person in a voting booth at a time and shall prevent any person from taking notice of how another person has voted, except when assistance is given under s. 6.82. They shall enforce s. 5.35 (5) and prevent electioneering from taking place in violation of s. 12.03. If any person refuses to obey the lawful commands of an inspector, or is disorderly in the presence or hearing of the inspectors, interrupts or disturbs the proceedings, they may order any law enforcement officer to remove the person from the voting area or to take the person into custody.

(3) CHECK BALLOT BOXES. Immediately before the proclamation that the polls are open the election inspectors shall open each

ballot box in the presence of the people assembled there, turn the boxes upside down so as to empty them of everything that may be inside and then lock them. The ballot boxes shall remain locked and shall not be reopened until the polls close for the purpose of counting the ballots therein.

(4) **BALLOTING PROCEDURE.** At polling places which utilize paper ballots or electronic voting systems in which ballots are distributed to electors, 2 inspectors shall be assigned to take charge of the official ballots. They shall write their initials on the back of each ballot and deliver to each elector as he or she enters the voting booth one ballot properly endorsed by each of them. Where paper ballots are used, the inspectors shall fold each ballot in the proper manner to be deposited before delivering it to the elector. If asked, inspectors may instruct any elector as to the proper manner of marking the ballot, but they may not give advice, suggestions, express any preferences or make any requests as to the person for whom, the question on which or the ballot on which the elector shall vote.

(5) **IMPROPER CONDUCT.** Any election official who intentionally fails to properly endorse a ballot or who intentionally gives an elector a ballot not properly endorsed shall be removed as an election official.

(6) **ATTACH STICKERS.** Whenever a vacancy occurs in a nomination after the ballots have been printed and stickers are provided under s. 7.38 or 8.35 (2), the inspectors shall, at the direction of the municipal clerk, properly apply the stickers to the official ballots before endorsement.

(7) **POLL LISTS.** Two inspectors shall be assigned to have charge of the poll lists at each election.

(8) **ELECTRONIC VOTING SYSTEMS.** Prior to the opening of the polling place, wherever electronic voting systems employing voting devices are used, the inspectors shall place the voting devices in position for voting and examine them to see that they are in proper working order.

(9) **POSTING SAMPLE BALLOTS.** Two sample ballots sent by the municipal clerk shall be posted by the inspectors near the entrance to the polling place for public inspection throughout the day.

(10) **CHALLENGED ELECTORS.** If any person is challenged for cause, the inspectors shall proceed under ss. 6.92 and 6.925 and with the aid of other provisions of ch. 6 as appear applicable, shall resolve the challenge.

(11) **SPOILED BALLOTS.** Any spoiled ballot returned to an inspector under s. 6.80 (2) (c) shall be immediately destroyed by one of the inspectors.

(12) **CANVASSERS.** The election inspectors shall constitute the board of canvassers of their polling place and in that capacity shall perform the duties under s. 7.51, except as otherwise designated by the municipal clerk under ss. 5.85 and 5.86.

History: 1971 c. 304 s. 29 (2); 1975 c. 85; 1977 c. 427; 1979 c. 260, 311, 355; 1981 c. 391; 1983 a. 484 ss. 68, 69, 71 to 73, 172 (3); 1985 a. 304; 1989 a. 192; 1999 a. 182; 2001 a. 16; 2003 a. 265.

The requirement under sub. (4) that each ballot be initialed by 2 inspectors is directory, not mandatory, when the number of votes is equal to the number of electors. *Roth v. LaFarge School District Board of Canvassers*, 2001 WI App 221, 247 Wis. 2d 708, 634 N.W.2d 882.

7.38 Vacancies after nomination. (1) Except as provided in sub. (4), after the death of a candidate nominated for a partisan office, either in a primary or when no primary is required under s. 8.50 (3) (b), the vacancy may be filled by the candidate's political party. In the case of county offices, the vacancy shall be filled by the chairperson of the county committee. If no county committee exists, the vacancy shall be filled by the chairperson of the state committee. For other offices, the vacancy shall be filled by the chairperson of the state committee. The appropriate chairperson shall file with the official or agency with whom nomination papers are filed for the office a certificate signed, certified and sworn to the same as an original nomination paper. The certificate shall state the cause of the vacancy, the name of the new nominee and the office for which the nomination is made. A political party may not nominate a candidate for an office for which no person repre-

sents that party has filed nomination papers and a declaration of candidacy.

(2) The certificate shall be filed within 4 days of the date of notification of the vacancy and shall have the same effect as original nomination papers.

(3) If the vacancy occurs after ballots have been printed in any county or municipality, the chairperson of the committee filling the vacancy shall supply the municipal clerk with stickers containing the name of the new nominee only. The stickers may be no larger than the space provided on the ballot for the original candidate's name and office.

(4) There can be no vacancy in nomination prior to a party primary, except when no primary is required under s. 8.50 (3) (b).

(5) In the event of failure to file the name of a current state chairperson, as required under s. 8.17 (12), the board may not recognize the state committee for the purpose of filling vacancies under sub. (1).

History: 1971 c. 304 s. 29 (2); 1973 c. 334; 1975 c. 93, 200; 1977 c. 340, 427; 1979 c. 311; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1993 a. 184; 1999 a. 182.

7.40 Sample ballots. Any individual, committee or candidate, at their own expense, subject to limitations upon contributions and disbursements under ch. 11, may print a supply of sample ballots, provided they bear on their face the information required by s. 11.30 (2) and they contain all the names shown on the official ballot.

History: 1987 a. 391 s. 46m.

7.41 Public's right to access. (1) Any member of the public may be present at any polling place for the purpose of observation of an election, except a candidate at that election. The chief inspector may reasonably limit the number of persons representing the same organization who are permitted to observe an election at the same time.

(2) The chief inspector may restrict the location of any individual exercising the right under sub. (1) to certain areas within a polling place. The chief inspector shall clearly designate such an area as an observation area. Designated observation areas shall be so positioned to permit any authorized individual to readily observe all public aspects of the voting process.

(3) The chief inspector may order the removal of any individual exercising the right under sub. (1) if that individual commits an overt act which:

- (a) Disrupts the operation of the polling place; or
- (b) Violates s. 12.03 (2).

(4) No individual exercising the right under sub. (1) may view the confidential portion of a registration list maintained under s. 6.36 (4) or a poll list maintained under s. 6.79 (6). However, the inspectors shall disclose to such an individual, upon request, the existence of such a list, the number of electors whose names appear on the list, and the number of those electors who have voted at any point in the proceedings. No such individual may view the certificate of an absent elector who obtains a confidential listing under s. 6.47 (2).

History: 1989 a. 192; 1999 a. 49; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 39, 109.

SUBCHAPTER II

CANVASS OF RETURNS AND CERTIFICATION

7.50 Elector intent. (1) **REQUIREMENTS AND RESTRICTIONS.** (a) Except as provided in s. 7.15 (6), only ballots provided by the person authorized to have them printed shall be cast and counted in any election.

(b) When an elector casts more votes for any office or measure than he or she is entitled to cast at an election, all the elector's votes for that office or measure are invalid and the elector is deemed to have voted for none of them, except as provided in par. (c) and sub. (2) (d). If an elector casts less votes for any office or measure than

he or she is entitled to cast at an election, all votes cast by the elector shall be counted but no vote shall be counted more than once.

(c) If an elector casts more than one vote for the same candidate for the same office, the first vote is valid and the remaining votes are invalid.

(d) Whenever an electronic voting system is used at a polling place in a partisan primary, and the same ballot is utilized to cast votes for candidates of more than one recognized political party or candidates of a party and independent candidates, if an elector designates a preference for a party or for independent candidates, only votes cast within that preference category may be counted. If an elector does not designate a preference and makes a mark or affixes a sticker opposite candidates of more than one recognized political party or opposite a candidate in the independent candidates' column and a candidate of a recognized political party, no votes cast by the elector for any candidate for partisan office are valid. Votes for other candidates and votes on ballot questions, if any, shall be counted if otherwise valid.

(2) ASCERTAINMENT OF INTENT. All ballots cast at an election which bear the initials of 2 inspectors shall be counted for the person or referendum question for whom or for which they were intended, so far as the electors' intent can be ascertained from the ballots notwithstanding informality or failure to fully comply with other provisions of chs. 5 to 12. To determine intent:

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

(b) A ballot cast without any marks or stickers may not be counted. A ballot without a mark at the top of a party column may be counted only for persons for whom marks are applicable.

(c) If an elector marks a ballot with a cross (X), or any other marks, as |, A, V, O, /, ✓, +, within the square to the right of a candidate's name, or any place within the space in which the name appears, indicating an intent to vote for that candidate, it is a vote for the candidate whose name it is opposite.

(cm) Any apparent erasure of a mark next to the name of a candidate may not be counted as a vote for that candidate if the elector makes another mark next to the name of one or more different candidates for the same office and counting of the mark would result in an excess number of votes cast for the office.

(d) If an elector writes a person's name in the proper space for write-in candidates for an office, it is a vote for the person written in for the office indicated, regardless of whether the elector strikes the names appearing in the same column for the same office, or places a mark by the same or any other name for the same office, or omits placing a mark to the right of the name written in. If an elector is permitted to vote for more than one candidate for the same office in an election and casts one or more write-in votes which, when added to the votes cast for candidates whose names appear on the ballot, exceed the number of votes authorized to be cast for the office, the write-in votes shall be counted and the votes for candidates whose names appear on the ballot may not be counted, unless there are more write-in votes than votes authorized to be cast, in which case no votes may be counted for the office.

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

counted for the candidate for whom it was intended, if the elector's intent can be ascertained from the ballot itself.

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

(g) In partisan primaries, if an elector writes in the name of an individual on a ballot other than the one on which that individual's name is shown as a candidate, the write-in vote may not be counted.

(h) In the general election or a partisan special election, a write-in vote may not be counted for any candidate if the candidate's name appears on the official ballot, except a write-in vote cast for the same office under which the candidate's name appears if no other similar name appears on the ballot for any office.

(hm) In a nonpartisan primary or election using voting machines if an elector is permitted to vote for more than one candidate for the same office, a write-in vote may not be counted if the vote is cast for a candidate whose name appears on the ballot for that office.

(i) The failure by an elector to write in the name of a candidate for the office of vice president of the United States on the general election ballot does not invalidate the elector's vote for any candidate whose name is written in for the office of president of the United States. The failure of an elector to write in the name of a candidate for the office of president of the United States on the general election ballot invalidates the elector's vote for any candidate whose name is written in for the office of vice president of the United States. The failure of an elector to write in the name of a candidate for the office of governor or lieutenant governor on the general election ballot does not invalidate the elector's vote for any candidate whose name is written in for the office of governor or lieutenant governor alone.

(im) If an elector votes for an independent candidate for the office of governor or lieutenant governor but does not vote for any candidate as a running mate of that candidate for the office of lieutenant governor or governor, the vote cast by the elector shall be recorded as a vote cast for both offices and shall not be cumulated with a vote cast by any other elector for the same candidate for the same office jointly with any vote cast for a running mate of that candidate. If an elector votes for independent candidates for the offices of governor and lieutenant governor, the vote cast by the elector shall not be cumulated with a vote cast by any other elector for one but not both of the candidates for whom the elector casts his or her vote.

(j) If an elector writes in or pastes a sticker in the position for an office, it is a vote for that office, even if the elector writes in or the sticker indicates the name of a different office.

History: 1977 c. 107, 272, 427; 1979 c. 89, 311, 328; 1981 c. 377 ss. 20, 22; 1981 c. 391; 1983 a. 183; 1983 a. 484 ss. 75, 172 (3); 1985 a. 304; 1987 a. 391; 1989 a. 192, 359; 1991 a. 316; 1999 a. 6; 2001 a. 16.

A board of canvassers may use its discretion and make findings only when the standards of a statute do not apply. Sub. (2) (c) minimizes a board's discretion. When there is a qualifying mark in a qualifying place on the ballot the vote should be counted. *Roth v. LaFarge School District*, 2004 WI 6, 268 Wis. 2d 335, 674 N.W.2d 553, 02–0542.

7.51 Local board of canvassers. (1) CANVAAS PROCEDURE. Immediately after the polls close the inspectors shall proceed to canvass publicly all votes received at the polling place. In any municipality where an electronic voting system is used, the municipal governing body or board of election commissioners may provide or authorize the municipal clerk or executive director of the board of election commissioners to provide for the adjournment of the canvass to one or more central counting locations for specified polling places in the manner prescribed in subch. III of

ch. 5. No central counting location may be used to count votes at a polling place where an electronic voting system is not employed. The canvass, whether conducted at the polling place or at a central counting location, shall continue without adjournment until the canvass is completed and the return statements are made. The inspectors shall not permit access to the name of any elector who has obtained a confidential listing under s. 6.47 (2) during the canvass, except as authorized in s. 6.47 (8).

(2) TALLYING. (a) The inspectors shall first compare the poll lists, correcting any mistakes until the poll lists agree. The chief inspector and the inspectors who are responsible for recording electors under s. 6.79 shall verify the correctness of the poll lists after the polls close by each signing their name thereto. Where ballots are distributed to electors, the inspectors shall then open the ballot box and remove and count the number of ballots therein without examination except as is necessary to ascertain that each is a single ballot. If 2 or more ballots are folded together so as to appear as a single ballot, the inspectors shall lay them aside until the count is completed; and if, after a comparison of the count and the appearance of the ballots it appears to a majority of the inspectors that the ballots folded together were voted by the same person they may not be counted but the inspectors shall mark them as to the reason for removal, set them aside and carefully preserve them. The inspectors shall then proceed under par. (b).

(b) When during the counting of the ballots cast at an election a majority of the inspectors find that a ballot is so defective that they cannot determine with reasonable certainty for whom it was cast, they shall so mark the ballot and preserve it. The inspectors shall not count the vote cast on the ballot for any office for which they determine the ballot to be defective.

(c) Whenever the number of ballots exceeds the number of voting electors as indicated on the poll list, the inspectors shall place all ballots face up to check for blank ballots. In this paragraph, “blank ballot” means a ballot on which no votes are cast for any office or question. The inspectors shall mark, lay aside and preserve any blank ballots. If the number of ballots still exceeds the number of voting electors, the inspectors shall place all ballots face down and proceed to check for the initials. The inspectors shall mark, lay aside and preserve any ballot not bearing the initials of 2 inspectors or any absentee ballot not bearing the initials of the municipal clerk. During the count the inspectors shall count those ballots cast by challenged electors the same as the other ballots.

(d) The inspectors shall keep a written statement, in duplicate, of the number of ballots set aside and the number of defective ballots and challenged ballots. The statement shall contain a record of the reasons for setting aside each ballot and the reasons why each defective or challenged ballot is defective or challenged. The inspectors shall certify that the statement is correct, sign it, and attach it to the tally sheets.

(e) If, after any ballots have been laid aside, the number of ballots still exceeds the total number of electors recorded on the poll list, the inspectors shall separate the absentee ballots from the other ballots. If there is an excess number of absentee ballots, the inspectors shall place the absentee ballots in the ballot box and one of the inspectors shall publicly and without examination draw therefrom by chance the number of ballots equal to the excess number of absentee ballots. If there is an excess number of other ballots, the inspectors shall place those ballots in the ballot box and one of the inspectors shall publicly and without examination draw therefrom by chance the number of ballots equal to the excess number of those ballots. All ballots so removed may not be counted but shall be specially marked as having been removed by the inspectors on original canvass due to an excess number of ballots, set aside and preserved. When the number of ballots and total shown on the poll list agree, the inspectors shall return all ballots to be counted to the ballot box and shall turn the ballot box in such manner as to thoroughly mix the ballots. The inspectors shall then open, count and record the number of votes. When the ballots are counted, the inspectors shall separate them into piles for bal-

lots similarly voted. Objections may be made to placement of ballots in the piles at the time the separation is made.

(f) If corrected ballots are distributed under s. 5.72 (3) or 7.10 (3), only the votes cast on the corrected ballots may be counted for any office or referendum in which the original ballots differ from the corrected ballots.

(g) Immediately after the polls close, where voting machines are used, the inspectors shall open the registering or recording compartments or remove the record of the votes cast and shall canvass, record, announce and return on the tally sheets and certificates furnished. In recording the votes registered on any counter which, before the opening of the polls, did not register 000, the inspectors shall upon the return sheets subtract the number registered before the polls opened from the number registered when the polls closed. The difference between the 2 numbers is the correct vote for the candidate whose name was represented by the counter, except if the number registered on the counter when the polls closed is smaller than the number registered thereon when the polls opened, the number 1,000 shall be added to the number registered when the polls closed, before the subtraction is made.

(h) Where a voting machine is used which produces a written record of the total votes cast for each candidate or referendum, the written record shall be presumed correct without reference to the total shown on the recorder in making its original statement, unless an error in the record is clearly apparent or unless a candidate at the election, or in the canvass of a referendum an elector who voted at the referendum, requests that the machine be viewed.

(3) SECURING THE BALLOTS. (a) The inspectors shall place together all ballots counted by them which relate to any national, state or county office or any state, county or technical college district referendum and secure them together so that they cannot be untied or tampered with without breaking the seal. The secured ballots together with any ballots marked “Defective” shall then be secured by the inspectors in the ballot container in such a manner that the container cannot be opened without breaking the seals or locks, or destroying the container. The inspectors shall place the ballots cast under s. 6.97 in a separate, securely sealed carrier envelope which is clearly marked “Section 6.97 ballots”. The chief inspector and 2 other inspectors shall sign the carrier envelope. The carrier envelope shall not be placed in the ballot container. The inspectors shall then deliver the ballots to the municipal clerk in the ballot container and carrier envelope.

(b) For ballots which relate only to municipal or school district offices or referenda, the inspectors, in lieu of par. (a), after counting the ballots shall return them to the proper ballot boxes, lock the boxes, paste paper over the slots, sign their names to the paper and deliver them and the keys therefor to the municipal or school district clerk. The clerk shall retain the ballots until destruction is authorized under s. 7.23.

(c) Where voting machines are used, as soon as the count is complete and fully recorded, the inspectors shall seal, close and lock the machine, or remove the record so it cannot be voted on or tampered with. They shall then proceed to separately canvass and return any paper ballots voted under s. 5.40 (3) to (6). The inspectors shall count the challenged ballots the same as other ballots. Upon completion of the canvass, the inspectors shall return the paper ballots in a separate envelope marked “Paper Ballots”. The inspectors shall place the record of write-in votes cast on the machines in an envelope marked “Write-In Votes”. The inspectors shall return the paper ballots and write-in votes along with any printed voting record produced by the voting machines to the clerk under par. (a) or (b) or to the board of election commissioners. The inspectors shall place the envelopes and printed voting record in a properly sealed bag or container, indicating the ward or wards and county.

(d) All absentee certificate envelopes which have been opened shall be returned by the inspectors to the municipal clerk in a securely sealed carrier envelope which is clearly marked “used absentee certificate envelopes”. The envelopes shall be signed by

the chief inspector and 2 other inspectors. Except when the ballots are used in a municipal or school district election only, the municipal clerk shall transmit the used envelopes to the county clerk.

(4) ANNOUNCE AND REPORT. (a) The tally sheets shall state the total number of votes cast for each office and for each individual receiving votes for that office, whether or not the individual's name appears on the ballot, and shall state the vote for and against each proposition voted on. Upon completion of the tally sheets, the inspectors shall immediately complete inspectors' statements in duplicate. The inspectors shall state the excess, if any, by which the number of ballots exceeds the number of electors voting as shown by the poll list and shall state the number of the last elector as shown by the poll lists. At least 3 inspectors, including the chief inspector and, unless election officials are appointed under s. 7.30 (4) (c) without regard to party affiliation, at least one inspector representing each political party, shall then certify to the correctness of the statements and tally sheets and sign their names. All other election officials assisting with the tally shall also certify to the correctness of the tally sheets. When the tally is complete, the inspectors shall publicly announce the results from the statements.

(b) The chief inspector, or one of the inspectors appointed by him or her, immediately after the votes are tabulated or counted at each election, shall report the returns of the election to the municipal clerk or to the school district clerk for school district elections, except in 1st class cities. The clerk shall then make the returns public.

(5) RETURNS. (a) The inspectors shall make full and accurate return of the votes cast for each candidate and proposition on tally sheet forms provided by the municipal clerk for that purpose. Each tally sheet shall record the returns for each office or referendum by ward, unless combined returns are authorized in accordance with s. 5.15 (6) (b) in which case the tally sheet shall record the returns for each group of combined wards. After recording the votes, the inspectors shall seal in a carrier envelope outside the ballot bag or container one inspectors' statement under sub. (4) (a), one tally sheet, and one poll list for delivery to the county clerk, unless the election relates only to municipal or school district offices or referenda. The inspectors shall also similarly seal one inspectors' statement, one tally sheet, and one poll list for delivery to the municipal clerk. For school district elections, except in 1st class cities, the inspectors shall similarly seal one inspectors' statement, one tally sheet, and one poll list for delivery to the school district clerk. The inspectors shall immediately deliver all ballots, statements, tally sheets, lists, and envelopes to the municipal clerk.

(b) The municipal clerk shall arrange for delivery of all ballots, statements, tally sheets, lists, and envelopes relating to a school district election to the school district clerk. The municipal clerk shall deliver the ballots, statements, tally sheets, lists, and envelopes for his or her municipality relating to any county, technical college district, state, or national election to the county clerk by 2 p.m. on the day following each such election. The person delivering the returns shall be paid out of the municipal treasury. Each clerk shall retain ballots, statements, tally sheets, or envelopes received by the clerk until destruction is authorized under s. 7.23 (1).

(6) ELECTRONIC VOTING SYSTEMS. The procedure for canvassing of votes cast at polling places utilizing an electronic voting system in which ballots are distributed to electors shall follow the procedure for canvassing paper ballots insofar as applicable, and the procedure for canvassing of votes cast at polling places utilizing an electronic voting machine shall follow the procedure for canvassing of mechanical voting machines insofar as applicable, except as otherwise provided in ss. 5.85 to 5.89.

History: 1971 c. 304 s. 29 (2); 1977 c. 29; 1977 c. 394 s. 53; 1977 c. 427, 447; 1979 c. 260 ss. 36, 48; 1979 c. 311; 1981 c. 4, 391; 1983 a. 183, 442; 1983 a. 484 ss. 76, 77, 172 (3); 1983 a. 538; 1985 a. 120, 304; 1987 a. 391; 1989 a. 56, 192; 1993 a. 399; 1997 a. 127; 1999 a. 49, 182; 2001 a. 107, 109; 2003 a. 265.

Cross Reference: See also s. ElBd 5.01, Wis. adm. code.

7.53 Municipal canvass. **(1) MUNICIPALITIES WITH ONE POLLING PLACE.** Where the municipality constitutes one ward or combines all wards to utilize a single polling place under s. 5.15 (6) (b), the canvass shall be conducted publicly under s. 7.51 and the inspectors shall act as the municipal board of canvassers. Upon completion of the canvass and ascertainment of the results by the inspectors, the clerk shall publicly read the names of the persons voted for and the number of votes for each person for each municipal office, the names of the persons declared by the inspectors to have won nomination or election to each municipal office and the number of votes cast for and against each municipal referendum question.

(2) MUNICIPALITIES WITH 2 OR MORE WARDS. (a) Except as provided in par. (c), the municipal board of canvassers for municipal elections in each municipality utilizing more than one polling place shall be composed of the municipal clerk and 2 other qualified electors of the municipality appointed by the clerk. The members of the board of canvassers shall serve for 2-year terms commencing on January 1 of each odd-numbered year, except that any member who is appointed to fill a permanent vacancy shall serve for the unexpired term of the original appointee. If the municipal clerk's office is vacant, if the clerk cannot perform his or her duties or if the clerk is a candidate at an election being canvassed, the mayor, president or board chairperson of the municipality shall designate another qualified elector of the municipality to serve in lieu of the clerk for that election. If any other member of the board of canvassers is a candidate at the election being canvassed, the clerk shall appoint another qualified elector of the municipality to temporarily fill the vacancy.

(c) In cities of more than 500,000 population, the board of election commissioners shall act as the board of canvassers.

(cm) If one or more temporary vacancies on the municipal board of canvassers reduces the number of members to less than 3, the municipal clerk shall appoint a member to fill each vacancy, except in cities of more than 500,000 population. In cities of more than 500,000 population, the executive director of the board of election commissioners shall serve as a member of the board of canvassers to fill a temporary vacancy on that board.

(d) The municipal board of canvassers shall publicly canvass the returns of every municipal election. The canvass shall begin within 24 hours after the polls close. At the spring election, the board of canvassers shall publicly declare the results on or before the 2nd Tuesday in April. The board of canvassers shall prepare a statement showing the results of each election for any municipal office and each municipal referendum. After each primary for municipal offices, the board of canvassers shall prepare a statement certifying the names of those persons who have won nomination to office. After each other election for a municipal office and each municipal referendum, the board of canvassers shall prepare a determination showing the names of the persons who are elected to each municipal office and the results of each municipal referendum. The board of canvassers shall file each statement and determination in the office of the municipal clerk or board of election commissioners.

(3) SCHOOL DISTRICT ELECTIONS. (a) In a common, union high or unified school district, the school district clerk shall appoint 2 qualified electors of the school district prior to the date of the election being canvassed who shall, with the school district clerk, constitute the school district board of canvassers. If the school district clerk is a candidate at the election being canvassed, the other 2 members of the board of canvassers shall designate a 3rd member to serve in lieu of the clerk for that election. The school district clerk shall appoint a member to fill any other temporary vacancy on the board of canvassers. The canvass shall begin as soon as possible after receipt of the returns, and shall continue, without adjournment, until completed. The board of canvassers may return defective returns to the municipal board of canvassers in the manner provided in s. 7.60 (3). The board of canvassers

shall prepare a written statement showing the numbers of votes cast for each person for each office and for and against each question and shall prepare a determination showing the names of the persons who are elected to the school board and the results of any school district referendum. Following each primary election, the board of canvassers shall prepare a statement certifying the names of the persons who have won nomination to the school board. Each statement and determination shall be attested by each of the canvassers. The board of canvassers shall file each statement and determination in the school district office. The school district clerk shall certify nominations after each primary and issue certificates of election to persons who are elected to the school board after each election in the manner provided in sub. (4).

(b) In a 1st class city school district, the municipal board of canvassers or election commissioners shall determine the results of school district elections and referenda and shall file a written statement and determination of the results for each election and referendum in the office of the city clerk or board of election commissioners. The board of election commissioners or city clerk shall certify nominations after each primary and issue certificates of election to persons who are elected to the board of school directors after each election in the manner provided in sub. (4).

(4) **CERTIFICATE OF ELECTION.** As soon as the deadline for filing a petition for a recount has passed, the municipal clerk shall issue promptly a certificate of election to each person elected to any municipal office. When a valid petition for a recount is filed, the municipal clerk shall not issue the certificate of election for the office in question until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided.

History: 1971 c. 304 s. 29 (2); 1977 c. 290, 427, 447; 1979 c. 260; 1981 c. 314; 1983 a. 183, 484; 1985 a. 225; 1985 a. 304 ss. 93, 155; 1987 a. 391; 1989 a. 192; 1995 a. 16 s. 2; 1999 a. 182.

7.54 Contested elections. In all contested election cases, the contesting parties have the right to have the ballots opened and to have all errors of the inspectors, either in counting or refusing to count any ballot, corrected by the board of canvassers or court deciding the contest. The ballots and related materials may be opened only in open session of the board of canvassers or in open court and in the presence of the official having custody of them.

History: 1983 a. 484.

7.60 County canvass. (1) KEEP OFFICE OPEN. On election night the county clerk shall keep the clerk's office open to receive reports from the ward inspectors and shall post all returns.

(2) **COUNTY BOARD OF CANVASSERS.** The county clerk and 2 qualified electors of the county appointed by the clerk constitute the county board of canvassers. The members of the board of canvassers shall serve for 2-year terms commencing on January 1 of each odd-numbered year, except that any member who is appointed to fill a permanent vacancy shall serve for the unexpired term of the original appointee. One member of the board of canvassers shall belong to a political party other than the clerk's. The county clerk shall designate a deputy clerk who shall perform the clerk's duties as a member of the board of canvassers in the event that the county clerk's office is vacant, the clerk cannot perform his or her duties, or the clerk is a candidate at an election being canvassed. If the county clerk and designated deputy clerk are both unable to perform their duties, the county executive or, if there is no county executive, the chairperson of the county board of supervisors shall designate another qualified elector of the county to perform the clerk's duties. If a member other than the clerk cannot perform his or her duties, the clerk shall appoint another member to serve. No person may serve on the county board of canvassers if the person is a candidate for an office to be canvassed by that board. If lists of candidates for the county board of canvassers are submitted to the county clerk by political party county committees, the lists shall consist of at least 3 names and the clerk shall choose the board members from the lists. Where there is a county board of election commissioners, it shall serve as the board of can-

vassers. If the county board of election commissioners serves as the board of canvassers, the executive director of the county board of election commissioners shall serve as a member of the board of canvassers to fill a temporary vacancy on that board.

(3) **CANVASSING.** Not later than 9 a.m. on the Thursday after each election the county board of canvassers shall open and publicly examine the returns. If returns have not been received from any election district or ward in the county, they shall dispatch a messenger and the person having them shall deliver the returns to the messenger. If, on examination, any of the returns received are so informal or defective that the board cannot intelligently canvass them, they shall dispatch a messenger to deliver the returns back to the municipal board of canvassers with written specifications of the informalities or defects and command them to immediately complete the returns or remedy the defects in the manner required and deliver them to the messenger. Every messenger shall safely keep all returns, show them to no one but the municipal clerk and board of canvassers and deliver them to the county clerk with all possible dispatch. To acquire the necessary full returns and remedy any informalities or defects the county board of canvassers may adjourn not longer than one day at a time nor more than 2 days in all.

(4) **STATEMENTS AND DETERMINATIONS.** (a) The board of canvassers shall make separate duplicate statements showing the numbers of votes cast for the offices of president and vice president; state officials; U.S. senators and representatives in congress; state legislators; justice; court of appeals judge; circuit judges; district attorneys; and metropolitan sewerage commissioners, if the commissioners are elected under s. 200.09 (11) (am). If a municipal judge elected under s. 755.01 (4) serves a municipality that is located partially within the county and candidates for that judgeship file nomination papers in another county, the board of canvassers shall prepare a duplicate statement showing the numbers of votes cast for that judgeship in that county for transmittal to the other county. For partisan candidates, the statements shall include the political party or principle designation, if any, next to the name of each candidate. The board of canvassers shall also prepare a statement showing the results of any county, technical college district or statewide referendum. Each statement shall state the total number of votes cast in the county for each office; the names of all persons for whom the votes were cast, as returned; the number of votes cast for each person; and the number of votes cast for and against any question submitted at a referendum. The board of canvassers shall use one copy of each duplicate statement to report to the elections board, technical college district board or board of canvassers of any other county and shall file the other statement in the office of the county clerk or board of election commissioners.

(b) The board of canvassers shall then prepare a written determination, in duplicate where necessary, giving the names of the persons elected to any county office and to any municipal judgeship if the judge is elected under s. 755.01 (4) and candidates for that judgeship file nomination papers in that county. The board of canvassers shall likewise prepare a written determination showing the results of any county referendum. Following any primary election, the board of canvassers shall prepare a statement certifying the names of all persons who have won nomination to any county office or any municipal judgeship, if the judge is elected under s. 755.01 (4) and candidates for that judgeship file nomination papers in that county. The board of canvassers shall file all statements and determinations in the office of the county clerk or board of election commissioners.

(c) In preparing the statements and determinations, the board of canvassers shall carefully review the tally sheets and inspectors' statement. The board of canvassers may omit the names of individuals whose names do not appear on the ballot and who receive a comparatively small number of votes. The board of canvassers shall designate votes received by such individuals as scattering votes. The board of canvassers shall append to each statement and determination a tabulation of the votes cast at each

election district, ward or combination of wards authorized under s. 5.15 (6) (b) in the county for each office and each individual, whether the votes are canvassed or not, as well as the total canvassed votes cast for each individual and each office, except where scattering votes are designated. If any votes are rejected, the board of canvassers shall specify the reasons therefor.

(d) Each statement and determination issued under pars. (a) and (b) shall be certified as correct and attested to by each canvasser's signature.

(5) REPORTING. (a) Immediately following the canvass, the county clerk shall deliver or send to the elections board, by 1st class mail, a certified copy of each statement of the county board of canvassers for president and vice president, state officials, senators and representatives in congress, state legislators, justice, court of appeals judge, circuit judge, district attorney, and metropolitan sewerage commissioners, if the commissioners are elected under s. 200.09 (11) (am). The statement shall record the returns for each office or referendum by ward, unless combined returns are authorized under s. 5.15 (6) (b) in which case the statement shall record the returns for each group of combined wards. Following primaries the county clerk shall enclose on forms prescribed by the elections board the names, party or principle designation, if any, and number of votes received by each candidate recorded in the same manner. The county clerk shall deliver or transmit the certified statement to the elections board no later than 7 days after each primary and no later than 10 days after any other election. The board of canvassers shall deliver or transmit a certified copy of each statement for any technical college district referendum to the secretary of the technical college district board.

(b) If the board of canvassers becomes aware of a material mistake in the canvass of an election for state or national office or a statewide or technical college district referendum prior to the close of business on the day the elections board receives returns from the last county board of canvassers with respect to that canvass, the board of canvassers may petition the elections board to reopen and correct the canvass. The elections board shall direct the canvass to be reopened and corrected if it determines that the public interest so requires. If the elections board directs the canvass to be reopened, the board of canvassers shall reconvene and transmit a certified corrected copy of the canvass statement to the elections board or secretary of the technical college district board.

(6) CERTIFICATE OF ELECTION. Immediately after expiration of the time allowed to file a petition for a recount the county clerk shall issue a certificate of election to each person who is elected to any county office. The certificate notice shall state the amount of the required official bond, if any. When a petition for a recount is filed, the county clerk shall not issue the certificate of election for the office in question until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided.

(7) OFFICIAL CANVASS RECORD. After the certificates of election have been prepared under sub. (6), the county clerk shall retain one copy of the official canvass for county offices and referenda in his or her office for public inspection.

History: 1971 c. 304 s. 29 (2); 1973 c. 334 ss. 14, 57; 1975 c. 93, 199; 1977 c. 187, 427, 449; 1979 c. 221, 260, 355; 1981 c. 4; 1983 a. 442, 484, 538; 1985 a. 89, 304, 332; 1987 a. 391; 1989 a. 31; 1991 a. 316; 1993 a. 399; 1999 a. 150 s. 672; 1999 a. 182; 2001 a. 107, 109.

7.70 State canvass. (1) RECORDING AND PRESERVING RETURNS. (a) Upon receipt of the certified statements from the county clerks, the elections board shall record the election results by counties and file and carefully preserve the statements.

(b) If any county clerk fails or neglects to forward any statements, the elections board may require the clerk to do so immediately and if not received by the 8th day after a primary, or by the 11th day after any other election, the elections board may dispatch a special messenger to obtain them. Whenever it appears upon the face of any statement that an error has been made in reporting or computing, the elections board may return it to the county clerk for correction.

(3) CANVASSING. (a) The chairperson of the board or a designee of the chairperson appointed by the chairperson to canvass a specific election shall publicly canvass the returns and make his or her certifications and determinations on or before the 2nd Tuesday following a spring primary, the 15th day of May following a spring election, the 4th Tuesday in September following a September primary, the first day of December following a general election, the 2nd Thursday following a special primary, or within 18 days after any special election.

(b) The chairperson of the board or the chairperson's designee shall examine the certified statements of the county boards of canvassers. If it appears that any material mistake has been made in the computation of votes, or any county board of canvassers failed to canvass the votes or omitted votes from any ward or election district in the county, the chairperson of the board or the chairperson's designee may dispatch a messenger to the county clerk with written instructions to certify the facts concerning the mistake or the reason why the votes were not canvassed. A clerk to whom such instructions are delivered shall immediately make a true and full answer, sign it, affix the county seal and deliver it to the messenger. The messenger shall deliver it with all possible dispatch to the board.

(c) The chairperson of the board or the chairperson's designee shall conclude the state canvass within 10 days after its commencement.

(d) When the certified statements and returns are received, the chairperson of the board or the chairperson's designee shall proceed to examine and make a statement of the total number of votes cast at any election for the offices involved in the election for president and vice president; a statement for each of the offices of governor, lieutenant governor, if a primary, and a joint statement for the offices of governor and lieutenant governor, if a general election; a statement for each of the offices of secretary of state, state treasurer, attorney general, and state superintendent; for U.S. senator; representative in congress for each congressional district; the state legislature; justice; court of appeals judge; circuit judge; district attorney; metropolitan sewerage commission, if the commissioners are elected under s. 200.09 (11) (am); and for any referenda questions submitted by the legislature.

(e) The chairperson of the board or the chairperson's designee shall make a special statement to the board as soon as possible after the canvass certifying:

1. After each September primary, the name of each candidate not defeated in the primary who receives at least 6% of the total vote cast for all candidates on all ballots at the primary for each separate state office except district attorney, and the percentage of the total vote received by that candidate. Such percentage shall be calculated within each district in the case of legislative candidates.

2. After the general election, the name of each political party which receives at least one percent of the vote cast in such election for any statewide office.

(f) The statements shall show the persons' names receiving votes, and any referenda questions; the whole number of votes given to each; and an individual listing by the districts or counties in which they were given. The names of persons not regularly nominated who received only a comparatively small number of votes may be omitted and their votes designated as scattering votes.

(g) Following each primary election, the chairperson of the board or the chairperson's designee shall prepare a statement certifying the results of the primary, which shall indicate the names of the persons who have won nomination to any state or national office. Following each other election, the chairperson of the board or the chairperson's designee shall prepare a statement certifying the results of the election and shall attach to the statement a certificate of determination which shall indicate the names of persons who have been elected to any state or national office. The chairperson of the board or the chairperson's designee shall likewise prepare a statement and certificate for any statewide referendum.

The chairperson of the board or the chairperson's designee shall deliver each statement and determination to the board.

(h) Whenever a referendum question submitted to a vote of the people is approved, the board shall record it and the secretary of state shall have the record bound in the volume containing the original enrolled laws passed at the next succeeding session of the legislature and have the record published with the laws thereof. Whenever a constitutional amendment or other statewide validating or ratifying referendum question which is approved by the people does not expressly state the date of effectiveness, it shall become effective at the time the chairperson of the board or the chairperson's designee certifies that the amendment or referendum question is approved.

(i) The chairperson of the board or the chairperson's designee shall canvass only regular returns made by the county board of canvassers and shall not count or canvass any additional or supplemental returns or statements made by the county board or any other board or person. The chairperson of the board or the chairperson's designee shall not count or canvass any statement or return which has been made by the county board of canvassers at any other time than that provided in s. 7.60. This provision does not apply to any return made subsequent to a recount under s. 9.01, when the return is accepted in lieu of any prior return from the same county for the same office; or to a statement given to the chairperson of the board or chairperson's designee or a messenger sent by the chairperson or designee to obtain a correction.

(5) CERTIFICATES OF ELECTION. (a) The board shall record in its office each certified statement and determination made by the chairperson of the board or the chairperson's designee. Immediately after the expiration of the time allowed to file a petition for recount, the board shall make and transmit to each person declared elected a certificate of election under the seal of the board. It shall also prepare similar certificates, attested by the executive director of the board, addressed to the U.S. house of representatives, stating the names of those persons elected as representatives to the congress from this state. In the case of U.S. senators, the board shall prepare a certificate of election for the governor's signature, and the governor shall sign and affix the great seal of the state and transmit the certificate to the president of the U.S. senate. The certificate shall be countersigned by the secretary of state. If a person elected was elected to fill a vacancy, the certificate shall so state. When a valid petition for recount is filed, the chairperson of the board or the chairperson's designee may not certify a nomination,

and the governor or board may not issue a certificate of election until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided.

(b) For presidential electors, the elections board shall prepare a certificate showing the determination of the results of the canvass and the names of the persons elected, and the governor shall sign, affix the great seal of the state and transmit the certificate by registered mail to the U.S. administrator of general services. The governor shall also prepare 6 duplicate originals of such certificate and deliver them to one of the presidential electors on or before the first Monday after the 2nd Wednesday in December.

History: 1971 c. 304 s. 29 (2); 1973 c. 334 ss. 15, 57; 1975 c. 93, 199; 1977 c. 107, 187, 427, 449; 1979 c. 221, 260, 328; 1983 a. 484; 1985 a. 89, 304; 1987 a. 391; 1989 a. 31, 192; 1995 a. 16 s. 2; 1997 a. 27; 1999 a. 150 s. 672; 1999 a. 182.

Unless a constitutional amendment provides otherwise, it takes effect upon the certification of a statewide canvass of the votes as provided in sub. (3) (h). The legislature has the authority under Art. XII, s. 1 to adopt reasonable election laws to provide that state constitutional amendments are effective after canvass and certification. *State v. Gonzales*, 2002 WI 59, 253 Wis. 2d 158, 646 N.W.2d 280.

7.75 Presidential electors meeting. (1) The electors for president and vice president shall meet at the state capitol following the presidential election at 12:00 noon the first Monday after the 2nd Wednesday in December. If there is a vacancy in the office of an elector due to death, refusal to act, failure to attend or other cause, the electors present shall immediately proceed to fill by ballot, by a plurality of votes, the electoral college vacancy. When all electors are present, or the vacancies filled, they shall perform their required duties under the constitution and laws of the United States.

(2) The presidential electors, when convened, shall vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them under s. 8.18, the candidates whose names appeared on the nomination papers filed under s. 8.20, or the candidate or candidates who filed their names under s. 8.185 (2), except that at least one of the persons for whom the electors vote may not be an inhabitant of this state. A presidential elector is not required to vote for a candidate who is deceased at the time of the meeting.

History: 1979 c. 246.

7.80 Notice of election. Personal service or service by first class mail of a certificate of election is official notification for all legal purposes to any person of his or her election to office.

History: 1977 c. 427.