



1995 ASSEMBLY BILL 613

October 10, 1995 - Introduced by Representatives SKINDRUD, GOETSCH, HAHN, HANSON, LADWIG, LEHMAN, OLSEN, OTTE, OWENS, SERATTI and URBAN, cosponsored by Senator SCHULTZ. Referred to Committee on Elections and Constitutional Law.

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

Analysis by the Legislative Reference Bureau

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

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

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

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

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

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

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

6 7.08 (5) NOTICE OF WRITE-IN CANDIDATES. Whenever a write-in candidate files
7 a timely declaration of candidacy with the board, the board shall immediately notify
8 the county clerk or board of election commissioners of each county where the write-in
9 candidate seeks office of the name of the candidate and the office which the candidate
10 seeks.

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

12 7.10 (5) NOTICE OF WRITE-IN CANDIDATES. Whenever a write-in candidate files
13 a timely declaration of candidacy with the county clerk or the clerk receives notice
14 from the board under s. 7.08 (5) that a write-in candidate seeks office in the county,
15 the clerk shall immediately notify the municipal clerk or board of election
16 commissioners of each municipality in the county where the write-in candidate
17 seeks office of the name of the candidate and the office which the candidate seeks.

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

19 7.15 (1) (L) Whenever a write-in candidate files a timely declaration of
20 candidacy with the municipal clerk or the clerk receives notice from the county clerk
21 or board of election commissioners under s. 7.10 (5) or a school district clerk under
22 s. 120.06 (8) (dm) that a write-in candidate seeks office in the municipality, notify
23 the inspectors at each polling place in the municipality where the write-in candidate
24 seeks office of the name of the candidate and the office which the candidate seeks no
25 later than 8 p.m. on election day.

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

2 7.51 (2) (e) If, after any ballots have been laid aside, the number of ballots still
3 exceeds the total number of electors recorded on the registration or poll list, the
4 inspectors shall separate the absentee ballots from the other ballots. If there is an
5 excess number of absentee ballots, the inspectors shall place the absentee ballots in
6 the ballot box and one of the inspectors shall publicly and without examination draw
7 therefrom by chance the number of ballots equal to the excess number of absentee
8 ballots. If there is an excess number of other ballots, the inspectors shall place those
9 ballots in the ballot box and one of the inspectors shall publicly and without
10 examination draw therefrom by chance the number of ballots equal to the excess
11 number of those ballots. All ballots so removed may not be counted but shall be
12 specially marked as having been removed by the inspectors on original canvass due
13 to an excess number of ballots, set aside and preserved. When the number of ballots
14 and total shown on the poll or registration list agree, the inspectors shall return all
15 ballots to be counted to the ballot box and shall turn the ballot box in such manner
16 as to thoroughly mix the ballots. The inspectors shall then open, count and record
17 the number of votes. In recording votes, the inspectors may indicate votes cast for
18 write-in candidates who do not file timely declarations of candidacy for the offices
19 for which the candidates receive votes as scattering votes. When the ballots are
20 counted, the inspectors shall separate them into piles for ballots similarly voted.
21 Objections may be made to placement of ballots in the piles at the time the separation
22 is made.

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

24 7.51 (2) (g) Immediately after the polls close, where voting machines are used,
25 the inspectors shall open the registering or recording compartments or remove the

1 record of the votes cast and shall canvass, record, announce and return on the tally
2 sheets and certificates furnished. In recording votes, the inspectors may indicate
3 votes cast for write-in candidates who do not file timely declarations of candidacy for
4 the offices for which the candidates receive votes as scattering votes. In recording
5 the votes registered on any counter which, before the opening of the polls, did not
6 register 000, the inspectors shall upon the return sheets subtract the number
7 registered before the polls opened from the number registered when the polls closed.
8 The difference between the 2 numbers is the correct vote for the candidate whose
9 name was represented by the counter, except if the number registered on the counter
10 when the polls closed is smaller than the number registered thereon when the polls
11 opened, the number 1,000 shall be added to the number registered when the polls
12 closed, before the subtraction is made.

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

14 7.51 (4) (a) The tally sheets shall state the total number of votes cast for each
15 office and for each individual receiving votes for that office, ~~whether or not the~~
16 ~~individual's name appears on the ballot~~ except a write-in candidate who has not filed
17 a timely declaration of candidacy for the office for which the candidate receives a
18 vote, and shall state the vote for and against each proposition voted on. Upon
19 completion of the tally sheets, the inspectors shall immediately complete inspectors'
20 statements in duplicate. The inspectors shall state the excess by which the number
21 of ballots exceeds the number of electors voting as shown by the poll or registration
22 list, if any, and shall state the number of the last elector as shown by the registration
23 or poll lists. At least 3 inspectors, including the chief inspector and at least one
24 inspector representing each political party, shall then certify to the correctness of the
25 statements and tally sheets and sign their names. All other election officials

1 assisting with the tally shall also certify to the correctness of the tally sheets. When
2 the tally is complete, the inspectors shall publicly announce the results from the
3 statements.

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

5 7.53 (1) MUNICIPALITIES WITH ONE POLLING PLACE. Where the municipality
6 constitutes one ward or combines all wards to utilize a single polling place under s.
7 5.15 (6) (b), the canvass shall be conducted publicly under s. 7.51 and the inspectors
8 shall act as the municipal board of canvassers. Upon completion of the canvass and
9 ascertainment of the results by the inspectors, the clerk shall publicly read the
10 names of the persons voted for and the number of votes for each person for each
11 municipal office, except a write-in candidate who has not filed a timely declaration
12 of candidacy for the office for which the candidate receives a vote, the names of the
13 persons declared by the inspectors to have won nomination or election to each
14 municipal office and the number of votes cast for and against each municipal
15 referendum question.

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

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

1 showing the names of the persons who are elected to each municipal office and the
2 results of each municipal referendum. The statement shall include the number of
3 votes cast for each person for each municipal office, except a write-in candidate who
4 has not filed a timely declaration of candidacy for the office for which the candidate
5 receives a vote, and the number of votes cast for and against each question submitted
6 by the municipality. The board of canvassers shall file each statement and
7 determination in the office of the municipal clerk or board of election commissioners.

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

9 7.53 (3) (a) In a common, union high or unified school district, the school district
10 clerk shall appoint 2 qualified electors of the school district prior to the date of the
11 election being canvassed who shall, with the school district clerk, constitute the
12 school district board of canvassers. If the school district clerk is a candidate at the
13 election being canvassed, the other 2 members of the board of canvassers shall
14 designate a 3rd member to serve in lieu of the clerk for that election. The canvass
15 shall begin as soon as possible after receipt of the returns, and shall continue,
16 without adjournment, until completed. The board of canvassers may return
17 defective returns to the municipal board of canvassers in the manner provided in s.
18 7.60 (3). The board of canvassers shall prepare a written statement showing the
19 numbers of votes cast for each person for each office, except a write-in candidate who
20 has not filed a timely declaration of candidacy for the office for which the candidate
21 receives a vote, and the numbers of votes cast for and against each question and shall
22 prepare a determination showing the names of the persons who are elected to the
23 school board and the results of any school district referendum. Following each
24 primary election, the board of canvassers shall prepare a statement certifying the
25 names of the persons who have won nomination to the school board. Each statement

1 and determination shall be attested by each of the canvassers. The board of
2 canvassers shall file each statement and determination in the school district office.
3 The school district clerk shall certify nominations after each primary and issue
4 certificates of election to persons who are elected to the school board after each
5 election in the manner provided in sub. (4).

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

7 7.60 (4) (a) The board of canvassers shall make separate duplicate statements
8 showing the numbers of votes cast for the offices of president and vice president; state
9 officials; U.S. senators and representatives in congress; state legislators; justice;
10 court of appeals judge; circuit judges; district attorneys; municipal judges, if they are
11 elected under s. 755.01 (4); and metropolitan sewerage commissioners, if the
12 commissioners are elected under s. 66.23 (11) (am). For partisan candidates, the
13 statements shall include the political party or principle designation, if any, next to
14 the name of each candidate. The board of canvassers shall also prepare a statement
15 showing the results of any county, technical college district or statewide referendum.
16 Each statement shall state the total number of votes cast in the county for each office;
17 the names of all persons for whom the votes were cast, as returned; the number of
18 votes cast for each person, except a write-in candidate who has not filed a timely
19 declaration of candidacy for the office which the candidate receives a vote; and the
20 number of votes cast for and against any question submitted at a referendum. The
21 board of canvassers shall use one copy of the statement to report to the elections
22 board or technical college district board and shall file the other statement in the office
23 of the county clerk or board of election commissioners.

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

1 7.60 (4) (c) In preparing the statements and determinations, the board of
2 canvassers shall carefully review the tally sheets and inspectors' statement. The
3 board of canvassers may omit the names of ~~individuals whose names do not appear~~
4 ~~on the ballot and who receive a comparatively small number of votes.~~ The board of
5 canvassers write-in candidates who have not filed timely declarations of candidacy
6 for the offices for which the candidates receive votes, and shall designate votes
7 received by such individuals as scattering votes. The board of canvassers shall
8 append to each statement and determination a tabulation of the votes cast at each
9 election district, ward or combination of wards authorized under s. 5.15 (6) (b) in the
10 county for each office and each individual, whether the votes are canvassed or not,
11 as well as the total canvassed votes cast for each individual and each office, except
12 where scattering votes are designated. If any votes are rejected, the board of
13 canvassers shall specify the reasons therefor.

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

15 7.70 (3) (f) The statements shall show the persons' names receiving votes, and
16 any referenda questions; the whole number of votes given to each; and an individual
17 listing by the districts or counties in which they were given. The names of persons
18 ~~not regularly nominated who received only a comparatively small number of votes~~
19 write-in candidates who have not filed timely declarations of candidacy for the
20 offices for which the candidates receive votes may be omitted and their votes
21 designated as scattering votes.

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

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

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

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

12 (2m) FIRST CLASS CITY SCHOOL BOARD. A primary shall be held in 1st class cities
13 whenever there are more than 2 candidates, other than write-in candidates, for
14 member of the board of school directors at-large or from any election district in any
15 year.

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

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

20 **8.21 Declaration of candidacy.** Each candidate, except a write-in candidate
21 or a candidate for presidential elector under s. 8.20 (2) (d), shall file a declaration of
22 candidacy, no later than the latest time provided for filing nomination papers under
23 s. 8.10 (2) (a), 8.15 (1), 8.17 (2), 8.20 (8) (a) or 8.50 (3) (a), or the time provided under
24 s. 8.16 (2) or 8.35 (2) (c). A write-in candidate may file a declaration of candidacy no
25 later than 5 p.m. before the day of the primary or other election at which the

1 candidate seeks office. A candidate shall file the declaration with the officer or
2 agency with which nomination papers are filed for the office which the candidate
3 seeks, or if nomination papers are not required, with the clerk or board of election
4 commissioners of the jurisdiction in which the candidate seeks office. The
5 declaration shall be sworn to before any officer authorized to administer oaths. The
6 declaration shall contain the name of the candidate in the form specified under s.
7 8.10 (2) (b) for candidates for nonpartisan office or s. 8.15 (5) (a) or 8.20 (2) (a) for
8 candidates for partisan office, and shall state that the signer is a candidate for a
9 named office, that he or she meets or will at the time he or she assumes office meet
10 applicable age, citizenship, residency or voting qualification requirements, if any,
11 prescribed by the constitutions and laws of the United States and of this state, and
12 that he or she will otherwise qualify for office if nominated and elected. The Except
13 in the case of a write-in candidate, the declaration shall include the candidate's
14 name in the form in which it will appear on the ballot. Each candidate for state and
15 local office shall include in the declaration a statement that he or she has not been
16 convicted of any infamous crime for which he or she has not been pardoned and a list
17 of all felony convictions for which he or she has not been pardoned. In addition, each
18 candidate for state or local office shall include in the declaration a statement that
19 discloses his or her municipality of residence for voting purposes, and the street and
20 number, if any, on which the candidate resides. The declaration is valid with or
21 without the seal of the officer who administers the oath. A candidate for state or local
22 office shall file an amended declaration under oath with the same officer or agency
23 if any information contained in the declaration changes at any time after the original
24 declaration is filed and before the candidate assumes office or is defeated for election
25 or nomination.

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

2 120.06 (6) (b) No later than the first Tuesday in December prior to the spring
3 election, the school district clerk shall publish a type A notice of the school district
4 election under s. 10.01 (2) (a). Except as authorized in this paragraph, no later than
5 5 p.m. on the first Tuesday in January prior to the spring election, or on the next day
6 if Tuesday is a holiday, any qualified elector of the school district, other than a
7 write-in candidate as defined in s. 5.02 (26), may file a sworn declaration of
8 candidacy with the school district clerk in the form provided in s. 8.21 at the place
9 specified in the notice. A write-in candidate may file a declaration of candidacy no
10 later than 5 p.m. before the day of the primary or other election at which the
11 candidate seeks office. If the school district contains territory lying within a 2nd
12 class city, or if the school board or annual meeting requires nomination papers under
13 par. (a), any qualified elector of the school district who desires to be a candidate, other
14 than a write-in candidate, shall in addition file nomination papers in the form
15 prescribed under s. 8.10 (2) and (3) with the school district clerk at the place specified
16 in the notice. If an incumbent fails to file a declaration of candidacy, and nomination
17 papers, where required, within the time prescribed by this paragraph, all candidates
18 for the office held by the incumbent, other than the incumbent, may file a declaration
19 of candidacy and nomination papers, where required, no later than 72 hours after the
20 latest time prescribed in this paragraph. No extension of the time for filing a
21 declaration of candidacy or nomination papers applies if the incumbent files written
22 notification with the school district clerk, no later than 5 p.m. on the 2nd Friday
23 preceding the latest time prescribed in this paragraph for filing declarations of
24 candidacy, that the incumbent is not a candidate for reelection to his or her office, and
25 the incumbent does not file a declaration of candidacy for that office within the time

1 prescribed in this paragraph. In the case of a 3-member school board, the qualified
2 elector shall state in his or her declaration of candidacy and on the face of his or her
3 nomination papers, if any, the office for which the elector is a candidate. In the case
4 of an apportioned or numbered school board, the qualified elector shall state in his
5 or her declaration of candidacy and on the face of his or her nomination papers, if any,
6 the apportioned area or numbered seat for which the elector is a candidate. If a
7 candidate has not filed a registration statement under s. 11.05 by the time he or she
8 files a declaration of candidacy, the candidate shall file the statement with the
9 declaration. A candidate shall file an amended declaration under oath with the
10 school district clerk in the event of a change in any information provided in the
11 declaration as provided in s. 8.21.

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

13 120.06 (7) (a) No later than 5 p.m. on the 2nd Tuesday in January, the school
14 district clerk shall verify the declarations of candidacy and certify the names of
15 candidates who have filed valid nomination papers, where required, and who qualify
16 for office. In making verifications or certifications, the school district clerk shall
17 designate the form of each candidate's name to appear on the ballot in the manner
18 prescribed in s. 7.08 (2) (a). Once filed, a declaration of candidacy or nomination
19 papers may not be withdrawn. This paragraph does not apply to write-in
20 candidates, as defined in s. 5.02 (26).

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

22 120.06 (7) (b) The school board shall require a primary election if there are
23 more than 2 candidates, other than write-in candidates, as defined in s. 5.02 (26),
24 for any seat on a 3-member board or more than twice as many candidates as there
25 are members to be elected to an unnumbered school board of more than 3 members.

1 In school districts in which a plan of apportionment of school board members under
2 s. 120.02 (2) or a plan for election of school board members to numbered seats has
3 been adopted, the school board shall require a primary election for particular
4 apportioned areas for which there are more than twice as many candidates, other
5 than write-in candidates, as there are members to be elected and for any numbered
6 seat for which there are more than 2 candidates. When there is a primary election
7 it shall be held in conjunction with the spring primary.

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

9 120.06 (8) (dm) Whenever a write-in candidate, as defined in s. 5.02 (26), files
10 a timely declaration of candidacy with the clerk, the clerk shall immediately notify
11 the municipal clerk or board of election commissioners of each municipality in the
12 school district of the name of the candidate and the office which the candidate seeks.

13

(END)