

**1999 ASSEMBLY BILL 240**

March 23, 1999 – Introduced by Representatives SKINDRUD, AINSWORTH, BRANDEMUEHL, GOETSCH, GUNDERSON, HAHN, HANDRICK, HOVEN, KESTELL, KLUSMAN, LADWIG, MILLER, MUSSER, PETTIS, POWERS, SPILLNER, STASKUNAS, STONE and SYKORA, cosponsored by Senator SCHULTZ. Referred to Committee on Campaigns and Elections.

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

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***Analysis by the Legislative Reference Bureau***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 7.51 (4) (a) The tally sheets shall state the total number of votes cast for each  
9 office and for each individual receiving votes for that office, ~~whether or not the~~  
10 ~~individual's name appears on the ballot, and shall except a write-in candidate who~~  
11 ~~has not filed a timely declaration of candidacy for the office for which the candidate~~  
12 ~~receives a vote, unless there are no candidates whose names appear on the ballot for~~  
13 ~~that office or unless there appears on the ballot the name of a deceased candidate for~~  
14 ~~that office.~~ The tally sheets shall also state the vote for and against each proposition  
15 voted on. Upon completion of the tally sheets, the inspectors shall immediately  
16 complete inspectors' statements in duplicate. The inspectors shall state the excess  
17 by which the number of ballots exceeds the number of electors voting as shown by  
18 the poll or registration list, if any, and shall state the number of the last elector as  
19 shown by the registration or poll lists. At least 3 inspectors, including the chief  
20 inspector and, unless election officials are appointed under s. 7.30 (4) (c) without  
21 regard to party affiliation, at least one inspector representing each political party,  
22 shall then certify to the correctness of the statements and tally sheets and sign their  
23 names. All other election officials assisting with the tally shall also certify to the  
24 correctness of the tally sheets. When the tally is complete, the inspectors shall  
25 publicly announce the results from the statements.

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

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

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

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

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

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

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

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

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

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



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

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

8 7.60 **(4)** (c) In preparing the statements and determinations, the board of  
9 canvassers shall carefully review the tally sheets and inspectors' statement. The  
10 board of canvassers may omit the ~~names of individuals whose names do not appear~~  
11 ~~on the ballot and who receive a comparatively small number of votes.~~ The board of  
12 canvassers shall name of any write-in candidate who has not filed a timely  
13 declaration of candidacy for the office for which the candidate receives votes, and  
14 designate votes received by ~~such individuals~~ the candidate as scattering votes,  
15 unless there are no candidates whose names appear on the ballot for that office or  
16 unless there appears on the ballot for that office the name of a deceased candidate.  
17 The board of canvassers shall append to each statement and determination a  
18 tabulation of the votes cast at each election district, ward or combination of wards  
19 authorized under s. 5.15 (6) (b) in the county for each office and each individual,  
20 whether the votes are canvassed or not, as well as the total canvassed votes cast for  
21 each individual and each office, except where scattering votes are designated. If any  
22 votes are rejected, the board of canvassers shall specify the reasons therefor.

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

24 7.70 **(3)** (f) The statements shall show the persons' names receiving votes, and  
25 any referenda questions; the whole number of votes given to each; and an individual

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (END)