



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-4221/1
JTK:med:jm

2011 ASSEMBLY BILL 746

March 15, 2012 – Introduced by Representative ROYS. Referred to Committee on Election and Campaign Reform.

1 **AN ACT to repeal** 5.02 (24r), 5.37, 5.40 (3) (b), 5.40 (4), 5.40 (5), 5.53, 5.77 (2), 5.90
2 (2) and (3), 5.91 (18), 6.82 (3), 7.25, 7.50 (2) (hm), 7.51 (2) (g) and (h), 7.51 (3)
3 (c), 9.01 (1) (b) 6. to 8., 10.07 (2) and 12.13 (3) (y); **to renumber and amend** 5.77
4 (1), 5.90 (1) and 10.07 (1); **to amend** 5.02 (1c), 5.02 (1e), 5.02 (4m), 5.02 (24g),
5 5.05 (1) (e), 5.05 (14), 5.15 (6) (b), 5.35 (4), 5.40 (title), 5.40 (1), 5.40 (2), 5.40 (3)
6 (intro.), 5.40 (5m), 5.40 (6), 5.40 (7), 5.51 (6), 5.54, 5.55, 5.56, 5.62 (1) (a), 5.655
7 (1), 5.66, 5.68 (1), 5.68 (3), 5.72 (1), 5.76, 5.78, 5.81 (1), 5.81 (3), 5.85 (2) (a), 5.85
8 (5), 5.91 (6), 5.91 (7), 5.91 (9), 5.94, 6.15 (3), 6.80 (1), 6.80 (2) (a), 6.80 (2) (am),
9 6.80 (2) (f), 6.80 (3) (title), 6.80 (3) (b), 6.82 (2) (a) and (b), 6.96, 6.965, 6.97 (1),
10 7.03 (1) (a) and (d), 7.08 (1) (d), 7.10 (6), 7.15 (2) (c), 7.15 (3), 7.15 (6), 7.23 (1)
11 (h), 7.23 (2), 7.30 (1) (a), 7.37 (4), 7.41 (5), 7.51 (2) (a), 7.51 (6), 8.50 (3) (c), 8.55
12 (4), 9.01 (1) (a) 1., 9.01 (1) (a) 2. a., 9.01 (1) (ag) 1., 1m. and 2., 9.01 (1) (b) 8m.
13 and 8s., 9.01 (1) (b) 10., 9.01 (2), 9.01 (3), 9.01 (4), 9.01 (6) (a), 9.01 (7) (a), 10.01
14 (2) (b), 10.02 (2) (c), 10.02 (3) (a), 10.02 (3) (b) 1., 10.02 (3) (b) 2., 10.02 (3) (b) 3.

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1 and 4., 10.02 (3) (c), 10.02 (3) (d), 10.02 (3) (e), 10.02 (3) (f), 10.06 (3) (am) and
2 (bm), 10.06 (3) (e), 12.13 (2) (b) 6., 12.13 (3) (f), 12.13 (3) (j), 12.60 (1) (a), 67.05
3 (3) (a) 7. and 120.06 (11); and **to create** 5.91 (19) and 7.41 (4m) of the statutes;
4 **relating to:** discontinuance of the use of voting machines, recounts of
5 machine-readable ballots, petitions for recounts, inspection of areas where
6 voted ballots are stored, and destruction of ballots after an election.

Analysis by the Legislative Reference Bureau

This bill makes various changes in election laws relating to the discontinuance of the use of voting machines, recounts of machine-readable ballots, petitions for recounts, the inspection of areas where voted ballots are stored, and the destruction of ballots after an election.

Discontinuance of the use of voting machines

Currently, with limited exceptions, every municipality with a population of 7,500 or more must use voting machines or an electronic voting system at all primaries and other elections held in the municipality. Either mechanical or electronic voting machines may be used. No electronic voting system, including an electronic voting machine, may be used unless the system meets statutory standards and is approved by the Government Accountability Board for use at elections held in this state. All voting machines must be tested before each election to determine if they are functioning properly. If voting machines are used, ballots need not be printed and distributed to electors, but if electronic voting machines are used, the machines must maintain a cumulative tally of votes cast that is retrievable in the event of a power outage, evacuation, or malfunction so that the record of the votes cast prior to the time that the problem occurs is preserved. This bill discontinues the authorization for municipalities to use mechanical or electronic voting machines at elections held in this state. Under the bill, if an electronic voting system is used, the system must be of a type in which printed ballots are distributed to electors.

Recounts of machine-readable ballots

Currently, with a limited exception, a board of canvassers must use automatic tabulating equipment to conduct a recount of ballots that are in machine-readable form. However, a candidate, or an elector if the recount is for a referendum question, may petition the circuit court for an order requiring ballots in machine-readable form to be recounted by hand or by another method approved by the court. To obtain such an order, the candidate or elector must show by clear and convincing evidence that due to an irregularity or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect results and there is a substantial probability that recounting the ballots by hand or by another method will produce a more correct result and change the

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outcome of the election. This bill provides instead that the elector who petitions for a recount, a candidate at the election, or an elector who voted in a referendum that is the subject of a recount may file a written demand for the board of canvassers to recount the ballots in an election, or the ballots from a specified ward or polling place, by hand, in which case the board of canvassers must recount those ballots by hand.

Petitions for recounts

Currently, any candidate voted for at an election may petition for a recount of the votes cast at the election. If the difference between the votes cast for the leading candidate and the candidate receiving the next highest number of votes is less than ten if 1,000 or less votes are cast or not more than 0.5 percent if more than 1,000 votes are cast, the cost of the recount is paid by the local government or governments where the votes are cast. If the difference in the numbers of votes cast exceeds that level, the petitioner must pay a fee that depends upon the difference in the numbers of votes cast. This bill permits any elector who voted in an election for an office to petition for a recount of the votes cast at the election. Under the bill, the petitioner must pay a fee equal to the actual cost of performing the recount.

Destruction of ballots after an election

Currently, ballots at an election may be destroyed no earlier than 30 days after the election except that: 1) ballots at a federal election must be retained until 22 months after that election; 2) if a recount or appeal of a recount is pending or if the time for petitioning for a recount or review of a recount determination has not expired on the 30th day after an election, ballots must be retained until the recount or appeal is finally adjudicated; and 3) a court may order the retention of ballots for a longer period. This bill provides that ballots at an election must be retained until 14 days before the next regularly scheduled election but in no case earlier than 30 days after an election.

Inspection of areas where voted ballots are stored

This bill permits any individual, with reasonable prior notice to a municipal clerk or board of election commissioners, to inspect an area in which ballots relating to an election are stored after the election. The bill does not permit an individual to inspect ballots or to require the breaking of seals on ballot bags or containers.

For further information see the *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 (1c) of the statutes is amended to read:

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1 5.02 (1c) “Automatic tabulating equipment” means apparatus which
2 automatically examines and counts votes recorded on ballots or voting machines and
3 tabulates the results.

4 **SECTION 2.** 5.02 (1e) of the statutes is amended to read:

5 5.02 (1e) “Ballot” means a ballot label, sheet of paper or envelope on which
6 votes are recorded. ~~The term also includes a sheet or card, filmstrip or other device~~
7 ~~listing or containing information relative to offices, candidates and referenda which~~
8 ~~is placed, projected or composed on the board or screen inside a voting machine.~~

9 **SECTION 3.** 5.02 (4m) of the statutes is amended to read:

10 5.02 (4m) “Electronic voting system” means a system in which votes are
11 recorded on ballots, and the votes are subsequently counted and tabulated by
12 automatic tabulating equipment. ~~The term also includes a voting machine on which~~
13 ~~votes are recorded and tabulated by electronic means.~~

14 **SECTION 4.** 5.02 (24g) of the statutes is amended to read:

15 5.02 (24g) “Voting device” means an apparatus ~~other than a voting machine~~
16 which the elector uses to record his or her votes on a ballot.

17 **SECTION 5.** 5.02 (24r) of the statutes is repealed.

18 **SECTION 6.** 5.05 (1) (e) of the statutes is amended to read:

19 5.05 (1) (e) Delegate to its legal counsel the authority to intervene in a civil
20 action or proceeding under sub. (9), issue an order under s. 5.06, exempt a polling
21 place from accessibility requirements under s. 5.25 (4) (a), exempt a municipality
22 from the requirement to use ~~voting machines or an electronic voting system~~ under
23 s. 5.40 (5m), approve an electronic data recording system for maintaining poll lists
24 under s. 6.79, or authorize nonappointment of an individual who is nominated to

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1 serve as an election official under s. 7.30 (4) (e), subject to such limitations as the
2 board deems appropriate.

3 **SECTION 7.** 5.05 (14) of the statutes is amended to read:

4 5.05 (14) INFORMATION FROM COUNTY AND MUNICIPAL CLERKS. The board may
5 request information from county and municipal clerks relating to election
6 administration, performance of electronic voting systems and ~~voting machines~~, and
7 use of paper ballots in elections.

8 **SECTION 8.** 5.15 (6) (b) of the statutes, as affected by 2011 Wisconsin Act 75, is
9 amended to read:

10 5.15 (6) (b) No later than 30 days before each election, the governing body of
11 any municipality may by resolution combine 2 or more wards for voting purposes to
12 facilitate using a common polling place. Whenever wards are so combined, the
13 original ward numbers shall continue to be utilized for all official purposes. Except
14 as otherwise authorized under this paragraph, every municipality having a
15 population of 35,000 or more shall maintain separate returns for each ward so
16 combined. In municipalities having a population of less than 35,000, the governing
17 body may provide in the resolution that returns shall be maintained only for each
18 group of combined wards at any election. Whenever a governing body provides for
19 common ballot boxes and ballots or ~~voting machines~~, separate returns shall be
20 maintained for each separate ballot required under ss. 5.62 and 5.64 at the partisan
21 primary and general election. The municipal clerk shall transmit a copy of the
22 resolution to the county clerk of each county in which the municipality is contained.
23 In municipalities having a population of less than 35,000, the resolution shall remain
24 in effect for each election until modified or rescinded, or until a new division is made
25 under this section.

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1 **SECTION 9.** 5.35 (4) of the statutes is amended to read:

2 5.35 (4) LAYOUT; ORGANIZATION. All voting booths and machines shall be placed
3 apart from other activities in the polling place, with their exteriors in full view of the
4 election officials. Only the proper election officials, persons observing the
5 proceedings under s. 7.41, persons assisting voters under s. 6.82 (2) and electors
6 receiving, preparing or depositing their ballots or casting their votes on the machines
7 are permitted in the voting area. Except where assistance is authorized, only one
8 elector at a time is permitted in a voting booth or machine.

9 **SECTION 10.** 5.37 of the statutes, as affected by 2011 Wisconsin Acts 23 and 32,
10 is repealed.

11 **SECTION 11.** 5.40 (title) of the statutes is amended to read:

12 **5.40 (title) Use of voting machines or systems.**

13 **SECTION 12.** 5.40 (1) of the statutes is amended to read:

14 5.40 (1) Except as permitted in sub. (3) or as required in subs. (4) to (5m) and
15 (6), the governing body or board of election commissioners of every municipality with
16 a population of 10,000 or more before July 1, 1995, or of 7,500 or more thereafter shall
17 require the use of voting machines or electronic voting systems in every ward in the
18 municipality at every election. Any other governing body or board of election
19 commissioners may adopt and purchase voting machines or electronic voting
20 systems for use in any ward in the municipality at any election.

21 **SECTION 13.** 5.40 (2) of the statutes is amended to read:

22 5.40 (2) Only voting machines complying with s. 5.37 or electronic voting
23 systems approved under s. 5.91 may be used in an election in this state.

24 **SECTION 14.** 5.40 (3) (intro.) of the statutes is amended to read:

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1 5.40 (3) (intro.) Notwithstanding sub. (1), any municipality may elect to utilize
2 paper ballots and voting booths instead of ~~voting machines or~~ an electronic voting
3 system:

4 **SECTION 15.** 5.40 (3) (b) of the statutes is repealed.

5 **SECTION 16.** 5.40 (4) of the statutes is repealed.

6 **SECTION 17.** 5.40 (5) of the statutes is repealed.

7 **SECTION 18.** 5.40 (5m) of the statutes is amended to read:

8 5.40 (5m) Notwithstanding sub. (1), the governing body of a municipality
9 which uses ~~voting machines or~~ an electronic voting system may petition the board
10 for permission to use paper ballots and voting booths for a specific election, and the
11 board may grant such a request.

12 **SECTION 19.** 5.40 (6) of the statutes is amended to read:

13 5.40 (6) A municipality which utilizes ~~voting machines or~~ an electronic voting
14 system at a polling place may permit use of the ~~machines or~~ system by electors voting
15 under s. 6.15 only as authorized under s. 6.15 (3).

16 **SECTION 20.** 5.40 (7) of the statutes is amended to read:

17 5.40 (7) Whenever a municipality adopts and purchases ~~voting machines or~~ an
18 electronic voting system, or adopts and purchases a different type of ~~voting machine~~
19 ~~or~~ electronic voting system from the type it was previously using, the municipal clerk
20 or executive director of the municipal board of election commissioners shall promptly
21 notify the county clerk or executive director of the county board of election
22 commissioners and the administrator of the elections division of the board in writing.

23 **SECTION 21.** 5.51 (6) of the statutes is amended to read:

24 5.51 (6) All candidates' names for the same office shall be placed, ~~projected or~~
25 ~~composed~~ on the ballot in the same size, style and color of type. The style and size

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1 of type shall conform substantially to the official ballot forms prescribed by the board
2 under s. 7.08 (1) (a).

3 **SECTION 22.** 5.53 of the statutes is repealed.

4 **SECTION 23.** 5.54 of the statutes is amended to read:

5 **5.54 Notice to electors.** Every ballot, ~~except a voting machine ballot,~~ shall
6 bear substantially the following information on the face: "NOTICE TO ELECTORS: This
7 ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee
8 ballot, the ballot must bear the initials of the municipal clerk or deputy clerk."

9 **SECTION 24.** 5.55 of the statutes is amended to read:

10 **5.55 Information.** On every ballot, ~~except a voting machine ballot,~~ shall be
11 printed "Official Ballot" or "Official Ballot for" followed by the designation
12 of the polling place for which the ballot has been prepared, the date of the election,
13 and the official endorsement and blank certificates. The number of the ward or
14 wards or aldermanic district, if any, and the name of the municipality may be omitted
15 in printing and stamped or written on the ballots at any location which is clearly
16 visible at the option of the county clerk. Printed information and initials shall appear
17 on the back and outside of the ballot.

18 **SECTION 25.** 5.56 of the statutes is amended to read:

19 **5.56 Multiple columns and rows.** ~~Whenever the number of candidates for~~
20 ~~any office requires the use of more than one row or column on a voting machine or~~
21 ~~whenever the official or agency having the responsibility to determine ballot~~
22 ~~positions determines that the number of candidates for an office requires the use of~~
23 ~~more than one column on a ballot, the official or agency having such responsibility~~
24 ~~shall require that the rows or columns be rotated in such a manner that all rows are~~
25 ~~positioned on top, or all columns are positioned to the left, in an equal number of~~

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1 wards or election districts. If the number of wards and election districts in which
2 voting for an office is conducted is not equally divisible, the position of the rows or
3 columns in the remaining wards or election districts shall be determined by the
4 official or agency by the drawing of lots. The number of columns or rows shall be
5 determined at the same time that the positions of the candidates' names are
6 determined for each primary and election.

7 **SECTION 26.** 5.62 (1) (a) of the statutes, as affected by 2011 Wisconsin Acts 32
8 and 75, is amended to read:

9 5.62 (1) (a) At the partisan primary, the following ballot shall be provided for
10 the nomination of candidates of recognized political parties for national, state and
11 county offices and independent candidates for state office in each ward, in the same
12 form as prescribed by the board under s. 7.08 (1) (a), except as authorized in s. 5.655.
13 The ballots shall be made up of the several party tickets with each party entitled to
14 participate in the primary under par. (b) or sub. (2) having its own ballot, except as
15 authorized in s. 5.655. The ballots shall be secured together at the bottom. The party
16 ballot of the party receiving the most votes for president or governor at the last
17 general election shall be on top with the other parties arranged in descending order
18 based on their vote for president or governor at the last general election. The ballots
19 of parties qualifying under sub. (2) shall be placed after the parties qualifying under
20 par. (b), in the same order in which the parties filed petitions with the board. Any
21 ballot required under par. (b) 2. shall be placed next in order. ~~At polling places where~~
22 ~~voting machines are used, each party shall be represented in one or more separate~~
23 ~~columns or rows on the ballot.~~ At polling places where an electronic voting system
24 is used ~~other than an electronic voting machine~~, each party may be represented in
25 separate columns or rows on the ballot.

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1 **SECTION 27.** 5.655 (1) of the statutes is amended to read:

2 5.655 (1) Whenever a separate ballot is required to be used, a municipality may
3 use a single ballot to facilitate the use of ~~voting machines~~ or an electronic voting
4 system or, if the municipality employs paper ballots, may use a consolidated paper
5 ballot that is authorized under sub. (2). If a municipality uses a single ballot in lieu
6 of separate ballots, the ballot shall include a separate column or row for any office,
7 referendum or party for which a separate ballot is required by law and the ballot shall
8 be distributed only to electors who are eligible to vote for all of the offices and
9 referenda appearing on the ballot.

10 **SECTION 28.** 5.66 of the statutes is amended to read:

11 **5.66 Number of ballots.** (1) For local elections, where necessary, municipal
12 clerks shall have sufficient ballots printed ~~or otherwise prepared whenever a voting~~
13 ~~system does not utilize printed ballots~~ to assure a ballot for all electors ~~or voting~~
14 ~~machines~~. For all other elections the municipal clerks shall certify to their county
15 clerk, on the first day of the 2nd month preceding the month in which the primary
16 is held, the approximate number of electors in the municipality. The county clerk
17 shall total these estimates and order a sufficient supply to assure ballots for all
18 electors ~~and voting machines~~.

19 (2) The county clerk or board of election commissioners shall print a sufficient
20 number of sample ballots. The municipal clerk or board of election commissioners
21 shall print sample ballots whenever the municipality prepares ballots under s. 7.15
22 (2) (b) or (c). Sample ballots shall be printed on nonwhite colored paper and shall be
23 overprinted "SAMPLE". ~~Voting machine sample ballots shall be a reduced size~~
24 ~~diagram of the face of the board or screen inside the voting machine with all~~
25 ~~candidates, issues and voting instructions as they will appear on the official ballot.~~

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1 Sample ballots to be used with an electronic voting system ~~in which ballots that are~~
2 ~~distributed to electors~~ are used shall be an actual size copy of the ballot. The clerk
3 or board of election commissioners printing the ballots shall distribute the samples
4 approximately as follows: 45% shall be kept in the clerk's or board's office and
5 distributed to electors requesting them; 45% shall be sent to the municipalities, or,
6 if the municipality prints ballots, 45% shall be sent to the county for distribution to
7 the electors; and 10% shall be reserved to be sent to the polling places by
8 municipalities in proportion to the number certified in sub. (1) and made available
9 to electors at the polls on election day.

10 **SECTION 29.** 5.68 (1) of the statutes is amended to read:

11 5.68 (1) The cost of acquisition of ballot boxes and voting booths, ~~voting~~
12 ~~machines~~ or electronic voting systems and regular maintenance thereof shall be
13 borne by the municipalities in which the boxes, booths, ~~machines~~ or systems are
14 used.

15 **SECTION 30.** 5.68 (3) of the statutes is amended to read:

16 5.68 (3) If ~~voting machines are used or if~~ an electronic voting system is used
17 in which all candidates and referenda appear on the same ballot, the ballots for all
18 national, state and county offices and for county and state referenda shall be
19 prepared and paid for by the county wherein they are used. If the ~~voting machine~~
20 ~~or~~ electronic voting system ballot includes a municipal or school, technical college,
21 sewerage or sanitary district ballot, the cost of that portion of the ballot shall be
22 reimbursed to the county or paid for by the municipality or district, except as
23 provided in a 1st class city school district under sub. (2).

24 **SECTION 31.** 5.72 (1) of the statutes is amended to read:

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1 5.72 (1) As soon as possible after ballots are delivered to the county clerk or to
2 the municipal clerk if the municipality is preparing ballots under s. 7.15 (2), but not
3 later than 3 weeks before any election relating to a state or national office or
4 statewide referendum, the county or municipal clerk preparing the ballots shall
5 submit one copy of each ballot to the board for review of possible errors. If the
6 contractor preparing the ballots supplies proofs in advance of ballot preparation, the
7 clerk shall submit one copy of the proofs in lieu of actual ballots. If a ~~voting machine~~
8 ~~ballot or other~~ ballot combining local candidates or referenda with state or national
9 candidates or referenda is used, the entire ballot shall be submitted, but ~~if ballots~~
10 ~~intended for distribution to electors are used~~, otherwise only those ballots relating
11 to state or national offices and statewide referenda need be submitted. This
12 subsection does not require delay of ballot distribution or mailing of absentee ballots.

13 **SECTION 32.** 5.76 of the statutes is amended to read:

14 **5.76 Adoption, experimentation or discontinuance of systems.** The
15 governing body or board of election commissioners of any municipality may by
16 ordinance or resolution adopt, experiment with, or discontinue any electronic voting
17 system authorized by this subchapter and approved under s. 5.91 for use in this state,
18 and may purchase or lease materials or equipment for such system to be used in all
19 or some of the wards within its jurisdiction, either exclusively or in combination with
20 ~~mechanical voting machines, or in combination with~~ paper ballots where such ballots
21 are authorized to be used.

22 **SECTION 33.** 5.77 (1) of the statutes is renumbered 5.77 and amended to read:

23 **5.77 Applicable procedures.** So far as applicable, the procedure provided
24 for voting paper ballots applies when an electronic voting system ~~employing the use~~
25 ~~of ballots distributed to electors~~ is used.

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1 **SECTION 34.** 5.77 (2) of the statutes is repealed.

2 **SECTION 35.** 5.78 of the statutes is amended to read:

3 **5.78 Voting booths.** At polling places where an electronic voting system
4 ~~employing the use of ballots distributed to electors~~ is used, the municipality shall
5 supply a sufficient number of voting booths for the use of electors as provided in s.
6 5.35 (2).

7 **SECTION 36.** 5.81 (1) of the statutes is amended to read:

8 5.81 (1) Whenever the statutes provide for the use of separate ballots or
9 columns or rows for offices, parties or referenda, and an electronic voting system ~~in~~
10 ~~which ballots are distributed to electors~~ is used at a polling place, a single ballot may
11 be used for all offices, referenda and parties. The ballot information, whether placed
12 on the ballot or on the voting device, shall, as far as practicable, be grouped and
13 ordered in the same manner as provided for other ballots under this chapter, except
14 that the information on the ballot need not be in separate columns or rows.

15 **SECTION 37.** 5.81 (3) of the statutes is amended to read:

16 5.81 (3) If a municipality utilizes an electronic voting system ~~in which ballots~~
17 ~~distributed to electors are employed~~, absentee ballots may consist of ballots utilized
18 with the system or paper ballots and envelopes voted in person in the office of the
19 municipal clerk or voted by mail.

20 **SECTION 38.** 5.85 (2) (a) of the statutes is amended to read:

21 5.85 (2) (a) The election officials shall examine the ballots or record of votes cast
22 for write-in votes and shall count and tabulate the write-in votes. When an
23 electronic voting system is used ~~in which ballots are distributed to electors~~, before
24 separating the remaining ballots from their respective covering envelopes, the
25 election officials shall examine the ballots for write-in votes. When an elector has

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1 cast a write-in vote, the election officials shall compare the write-in vote with the
2 votes on the ballot to determine whether the write-in vote results in an overvote for
3 any office. In case of an overvote for any office, the election officials shall make a true
4 duplicate ballot of all votes on the ballot except for the office that is overvoted, by
5 using an official ballot of that kind used by the elector who voted the original ballot,
6 and one of the marking devices so as to transfer all votes of the elector except for the
7 office overvoted, to an official ballot of that kind used in the ward at that election.
8 Unless election officials are selected under s. 7.30 (4) (c) without regard to party
9 affiliation, the election officials shall consist in each case of at least one election
10 official of each of the 2 major political parties, whenever officials of both parties are
11 present.

12 **SECTION 39.** 5.85 (5) of the statutes is amended to read:

13 5.85 (5) If the municipality has designated a central counting location to be
14 used to count ballots under s. 7.51 (1), the inspectors shall count and deposit the
15 paper ballots in the container. The inspectors shall then place the slip made out
16 under sub. (4) in the container. The inspectors shall also place the tally sheet
17 recording the write-in votes and other votes cast on paper ballots, and all other
18 ballots, or the record of the votes cast on an electronic voting system ~~where no ballots~~
19 ~~are distributed to electors~~, in the container and shall thereupon immediately seal the
20 container with an adhesive seal provided by the municipal clerk for the purpose in
21 such manner that the seal completely covers the opening in the container, and each
22 of the inspectors shall sign the seal. The "Defective Ballots" envelope, and "Original
23 Ballots" envelope each shall be securely sealed and the flap or end thereof of each
24 signed by the inspectors and returned to the central counting location with the box
25 for return of the ballots, enclosed ballots and returns. Thereupon, the municipal

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1 clerk or 2 of the election officials shall forthwith and by the most direct route
2 transport the container and envelopes to the central counting location designated by
3 the municipal clerk. Unless election officials are selected under s. 7.30 (4) (c) without
4 regard to party affiliation, the election officials shall consist in each case of at least
5 one election official of each of the 2 major political parties, whenever officials of both
6 parties are present.

7 **SECTION 40.** 5.90 (1) of the statutes is renumbered 5.90 and amended to read:

8 **5.90 Recounts.** Except as otherwise provided in this subchapter, recounts of
9 votes cast ~~on~~ at an election in which an electronic voting system is used shall be
10 conducted in the manner prescribed in s. 9.01. Except as provided in ~~sub. (2) and s.~~
11 9.01 (1) (b) 8s., ~~if the ballots are distributed to the electors,~~ the board of canvassers
12 shall recount the ballots with using automatic tabulating equipment. ~~The~~ unless the
13 petitioner, a candidate at the election, or an elector who voted in a referendum that
14 is the subject of a recount files a written demand for the board of canvassers to
15 recount the ballots, or the ballots from a specified ward or polling place, by hand, in
16 which case the board of canvassers shall recount those ballots by hand. If automatic
17 tabulating equipment is used, the board of canvassers shall test the automatic
18 tabulating equipment to be used prior to the recount as provided in s. 5.84, and then
19 the official ballots or the record of the votes cast shall be recounted on the automatic
20 tabulating equipment. In addition, the board of canvassers shall check the ballots
21 for the presence or absence of the initials and other distinguishing marks, shall
22 examine the ballots marked “Rejected”, “Defective” and “Objected to” to determine
23 the propriety of such labels, and shall compare the “Duplicate Overvoted Ballots”
24 and “Duplicate Damaged Ballots” with their respective originals to determine the
25 correctness of the duplicates. ~~If electronic voting machines are used, the board of~~

ASSEMBLY BILL 746**SECTION 40**

1 ~~canvassers shall perform the recount using the permanent paper record of the votes~~
2 ~~cast by each elector, as generated by the machines.~~

3 **SECTION 41.** 5.90 (2) and (3) of the statutes are repealed.

4 **SECTION 42.** 5.91 (6) of the statutes, as affected by 2011 Wisconsin Act 32, is
5 amended to read:

6 5.91 (6) The voting device ~~or machine~~ permits an elector in a primary election
7 to vote for the candidates of the recognized political party of his or her choice, and
8 the automatic tabulating equipment ~~or machine~~ rejects any ballot on which votes are
9 cast in the primary of more than one recognized political party, except where a party
10 designation is made or where an elector casts write-in votes for candidates of more
11 than one party ~~on a ballot that is distributed to the elector.~~

12 **SECTION 43.** 5.91 (7) of the statutes is amended to read:

13 5.91 (7) It permits an elector to vote at an election for all persons and offices
14 for whom and for which the elector is lawfully entitled to vote; to vote for as many
15 persons for an office as the elector is entitled to vote for; to vote for or against any
16 question upon which the elector is entitled to vote; and it rejects all choices recorded
17 on a ballot for an office or a measure if the number of choices exceeds the number
18 which an elector is entitled to vote for on such office or on such measure, except where
19 an elector casts excess write-in votes ~~upon a ballot that is distributed to the elector.~~

20 **SECTION 44.** 5.91 (9) of the statutes is amended to read:

21 5.91 (9) It prevents an elector from voting for the same person more than once
22 for the same office, except where an elector casts excess write-in votes ~~upon a ballot~~
23 ~~that is distributed to the elector.~~

24 **SECTION 45.** 5.91 (18) of the statutes is repealed.

25 **SECTION 46.** 5.91 (19) of the statutes is created to read:

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1 5.91 (19) It requires the use of an individual printed ballot that is distributed
2 to the elector.

3 **SECTION 47.** 5.94 of the statutes is amended to read:

4 **5.94 Sample ballots; publication.** When an electronic voting system
5 ~~employing a ballot that is distributed to electors~~ is used, the county and municipal
6 clerk of the county and municipality in which the polling place designated for use of
7 the system is located shall cause to be published, in the type B notices, a true
8 actual-size copy of the ballot containing the names of offices and candidates and
9 statements of measures to be voted on, as nearly as possible, in the form in which they
10 will appear on the official ballot on election day. The notice may be published as a
11 newspaper insert. Municipal clerks may post the notice if the remainder of the type
12 B notice is posted.

13 **SECTION 48.** 6.15 (3) of the statutes, as affected by 2011 Wisconsin Act 23, is
14 amended to read:

15 6.15 (3) PROCEDURE AT POLLING PLACE. An eligible elector may appear at the
16 polling place for the ward or election district where he or she resides and make
17 application for a ballot under sub. (2). Except as otherwise provided in this
18 subsection, an elector who casts a ballot under this subsection shall follow the same
19 procedure required for casting a ballot at the municipal clerk's office under sub. (2).
20 The inspectors shall perform the duties of the municipal clerk, except that the
21 inspectors shall return the cancellation card under sub. (2) (b) to the municipal clerk
22 and the clerk shall forward the card as provided in sub. (2) (c) if required. Upon
23 proper completion of the application and cancellation card and verification of the
24 proof of identification and proof of residence, whenever required, as provided in sub.
25 (2) (bm), the inspectors shall permit the elector to cast his or her ballot for president

ASSEMBLY BILL 746**SECTION 48**

1 and vice president. The elector shall mark the ballot and, unless the ballot is utilized
2 with an electronic voting system, the elector shall fold the ballot, and deposit the
3 ballot into the ballot box or give it to the inspector. The inspector shall deposit it
4 directly into the ballot box. ~~Voting machines or ballots~~ Ballots utilized with
5 electronic voting systems may only be used by electors voting under this section if
6 they permit voting for president and vice president only.

7 **SECTION 49.** 6.80 (1) of the statutes is amended to read:

8 6.80 (1) ~~VOTING BOOTH OR MACHINE~~ USE. Only one individual at a time is
9 permitted to occupy a voting booth ~~or machine~~, except that an elector who is a parent
10 or guardian may be accompanied by the elector's minor child or minor ward, and an
11 elector who qualifies for assistance under s. 6.82 (2) may be assisted as provided in
12 that subsection.

13 **SECTION 50.** 6.80 (2) (a) of the statutes is amended to read:

14 6.80 (2) (a) Upon receiving his or her ballot and without leaving the polling
15 place, the elector shall enter an unoccupied voting booth ~~or machine~~ alone to cast his
16 or her vote, except as authorized in sub. (1). An elector may use or copy an unofficial
17 sample ballot which may be marked in advance of entering the polling place, but an
18 elector may not use or bring into the polling place any ballot printed upon paper of
19 the type required or utilized for official ballots at that polling place.

20 **SECTION 51.** 6.80 (2) (am) of the statutes is amended to read:

21 6.80 (2) (am) In partisan primaries, an elector may vote for a person as the
22 candidate of the party of the elector's choice, if that person's name does not appear
23 on the official ballot of that party, by writing in the name of the person in the space
24 provided on the ballot or the ballot provided for that purpose, ~~or where voting~~

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1 ~~machines are used, in the irregular ballot device,~~ designating the party for which the
2 elector desires such person to be the nominee.

3 **SECTION 52.** 6.80 (2) (f) of the statutes is amended to read:

4 6.80 (2) (f) In the presidential preference primary and other partisan primary
5 elections ~~at polling places where ballots are distributed to electors,~~ unless the ballots
6 are prepared under s. 5.655 or are utilized with an electronic voting system in which
7 all candidates appear on the same ballot, after the elector prepares his or her ballot
8 the elector shall detach the remaining ballots, fold the ballots to be discarded and fold
9 the completed ballot unless the ballot is intended for counting with automatic
10 tabulating equipment. The elector shall then either personally deposit the ballots
11 to be discarded into the separate ballot box marked "blank ballot box" and deposit
12 the completed ballot into the ballot box indicated by the inspectors, or give the ballots
13 to an inspector who shall deposit the ballots directly into the appropriate ballot
14 boxes. The inspectors shall keep the blank ballot box locked until the canvass is
15 completed and shall dispose of the blank ballots as prescribed by the municipal clerk.

16 **SECTION 53.** 6.80 (3) (title) of the statutes is amended to read:

17 6.80 (3) (title) TIME IN BOOTH ~~OR MACHINE.~~

18 **SECTION 54.** 6.80 (3) (b) of the statutes is amended to read:

19 6.80 (3) (b) If an elector refuses to leave the booth ~~or machine~~ after being
20 notified by one of the inspectors that the time has expired, the elector shall be
21 removed by the inspectors.

22 **SECTION 55.** 6.82 (2) (a) and (b) of the statutes are amended to read:

23 6.82 (2) (a) If an elector declares to the presiding election official that he or she
24 cannot read or write, or has difficulty in reading, writing or understanding English
25 or that due to disability is unable to mark a ballot ~~or depress a button or lever on a~~

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1 ~~voting machine~~, the elector shall be informed by the officials that he or she may have
2 assistance. When assistance is requested, the elector may select any individual to
3 assist in casting his or her vote. The selected individual rendering assistance may
4 not be the elector's employer or an agent of that employer or an officer or agent of a
5 labor organization which represents the elector. The selected individual shall certify
6 on the back of the ballot that it was marked with his or her assistance. ~~Where voting~~
7 ~~machines are used, certification shall be made on the registration list.~~

8 (b) The individual chosen shall enter the voting booth ~~or machine~~ with the
9 elector and shall read the names of all candidates on the ballot for each office, and
10 ask, "For which one do you vote?". The ballot shall be marked ~~or the lever or button~~
11 ~~depressed~~ according to the elector's expressed preference. The individual selected
12 to assist may not disclose to anyone how the elector voted.

13 **SECTION 56.** 6.82 (3) of the statutes is repealed.

14 **SECTION 57.** 6.96 of the statutes is amended to read:

15 **6.96 Voting procedure for electors voting pursuant to federal court**
16 **order.** Whenever any elector is allowed to vote at a polling place pursuant to a
17 federal court order after the closing time provided under s. 6.78, the inspectors shall,
18 before giving the elector a ballot, write on the back of the ballot the notation "s. 6.96".
19 ~~If voting machines are used in the municipality where the elector is voting, the~~
20 ~~elector's vote may be received only upon an absentee ballot furnished by the~~
21 ~~municipal clerk which shall have the notation "s. 6.96" written on the back of the~~
22 ~~ballot by the inspectors before the ballot is given to the elector.~~ When receiving the
23 elector's ballot, the inspectors shall provide the elector with the written voting
24 information prescribed by the board under s. 7.08 (8). The inspectors shall indicate
25 on the list the fact that the elector is voting pursuant to a federal court order. The

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1 inspectors shall then deposit the ballot. The ballot shall be counted under s. 5.85 or
2 7.51 unless the order is vacated. If the order is vacated after the ballot is counted, the
3 appropriate board or boards of canvassers or the chairperson of the board or his or
4 her designee shall reopen the canvass to discount any ballots that were counted
5 pursuant to the vacated order and adjust the statements, certifications, and
6 determinations accordingly.

7 **SECTION 58.** 6.965 of the statutes, as created by 2011 Wisconsin Act 23, is
8 amended to read:

9 **6.965 Voting procedure for electors presenting citation or notice in**
10 **lieu of license or receipt.** Whenever any elector is allowed to vote at a polling place
11 under s. 6.79 (7) by presenting a citation or notice of intent to revoke or suspend an
12 operator's license in lieu of an operator's license or driving receipt issued to the
13 elector under ch. 343, the inspectors shall, before giving the elector a ballot, write on
14 the back of the ballot the serial number of the elector corresponding to the number
15 kept at the election on the poll list or other list maintained under s. 6.79 and the
16 notation "s. 6.965." ~~If voting machines are used in the municipality where the elector~~
17 ~~is voting, the elector's vote may be received only upon an absentee ballot furnished~~
18 ~~by the municipal clerk which shall have the notation "s. 6.965" written on the back~~
19 ~~of the ballot by the inspectors before the ballot is given to the elector.~~ If the municipal
20 clerk receives an absentee ballot from an elector who presents a citation or notice,
21 or copy thereof, under s. 6.87 (4) (b) 4., the clerk shall enter a notation on the
22 certificate envelope "Ballot under s. 6.965, stats." Upon receiving the envelope, the
23 inspectors shall open and write on the back of the ballot the serial number of the
24 elector corresponding to the number kept at the election on the poll list or other list
25 maintained under s. 6.79 and the notation "s. 6.965." The inspectors shall indicate

ASSEMBLY BILL 746**SECTION 58**

1 on the poll list or other list maintained under s. 6.79 the fact that the elector is voting
2 by using a citation or notice in lieu of a license or driving receipt. The inspectors shall
3 then deposit the ballot. The ballot shall then be counted under s. 5.85, or under s.
4 7.51 or 7.52.

5 **SECTION 59.** 6.97 (1) of the statutes, as affected by 2011 Wisconsin Act 23, is
6 amended to read:

7 6.97 (1) Whenever any individual who is required to provide proof of residence
8 under s. 6.34 in order to be permitted to vote appears to vote at a polling place and
9 cannot provide the required proof of residence, the inspectors shall offer the
10 opportunity for the individual to vote under this section. Whenever any individual,
11 other than a military elector, as defined in s. 6.34 (1) (a), or an overseas elector, as
12 defined in s. 6.34 (1) (b), or an elector who has a confidential listing under s. 6.47 (2),
13 appears to vote at a polling place and does not present proof of identification under
14 s. 6.79 (2), whenever required, the inspectors or the municipal clerk shall similarly
15 offer the opportunity for the individual to vote under this section. If the individual
16 wishes to vote, the inspectors shall provide the elector with an envelope marked
17 "Ballot under s. 6.97, stats." on which the serial number of the elector is entered and
18 shall require the individual to execute on the envelope a written affirmation stating
19 that the individual is a qualified elector of the ward or election district where he or
20 she offers to vote and is eligible to vote in the election. The inspectors shall, before
21 giving the elector a ballot, write on the back of the ballot the serial number of the
22 individual corresponding to the number kept at the election on the poll list or other
23 list maintained under s. 6.79 and the notation "s. 6.97". ~~If voting machines are used~~
24 ~~in the municipality where the individual is voting, the individual's vote may be~~
25 ~~received only upon an absentee ballot furnished by the municipal clerk which shall~~

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1 ~~have the corresponding number from the poll list or other list maintained under s.~~
2 ~~6.79 and the notation "s. 6.97" written on the back of the ballot by the inspectors~~
3 ~~before the ballot is given to the elector.~~ When receiving the individual's ballot, the
4 inspectors shall provide the individual with written voting information prescribed
5 by the board under s. 7.08 (8). The inspectors shall indicate on the list the fact that
6 the individual is required to provide proof of residence or proof of identification under
7 s. 6.79 (2) but did not do so. The inspectors shall notify the individual that he or she
8 may provide proof of residence or proof of identification to the municipal clerk or
9 executive director of the municipal board of election commissioners. The inspectors
10 shall also promptly notify the municipal clerk or executive director of the name,
11 address, and serial number of the individual. The inspectors shall then place the
12 ballot inside the envelope and place the envelope in a separate carrier envelope.

13 **SECTION 60.** 7.03 (1) (a) and (d) of the statutes are amended to read:

14 7.03 (1) (a) Except as authorized under this paragraph, a reasonable daily
15 compensation shall be paid to each inspector, ~~voting machine custodian,~~ automatic
16 tabulating equipment technician, member of a board of canvassers, messenger, and
17 tabulator who is employed and performing duties under chs. 5 to 12. Daily
18 compensation shall also be provided to inspectors and inspector trainees for
19 attendance at training programs conducted by the board and municipal clerks under
20 ss. 7.31 and 7.315. Alternatively, such election officials and trainees may be paid by
21 the hour at a proportionate rate for each hour actually worked. Any election official
22 or trainee may choose to volunteer his or her services by filing with the municipal
23 clerk of the municipality in which he or she serves a written declination to accept
24 compensation. The volunteer status of the election official or trainee remains

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1 effective until the official or trainee files a written revocation with the municipal
2 clerk.

3 (d) Except as otherwise provided in par. (a), special registration deputies
4 appointed under s. 6.55 (6), special voting deputies appointed under s. 6.875 (4) and
5 officials and trainees who attend training sessions under s. 7.15 (1) (e) ~~or 7.25 (5)~~ may
6 also be compensated by the municipality where they serve at the option of the
7 municipality.

8 **SECTION 61.** 7.08 (1) (d) of the statutes is amended to read:

9 7.08 (1) (d) Promulgate rules for the administration of the statutory
10 requirements for ~~voting machines~~ and electronic voting systems and any other
11 voting apparatus which may be introduced in this state for use at elections.
12 Pursuant to such responsibility, the board may obtain assistance from competent
13 persons to check the ~~machines~~, systems and apparatus and approve for use those
14 types meeting the statutory requirements and shall establish reasonable
15 compensation for persons performing duties under this paragraph.

16 **SECTION 62.** 7.10 (6) of the statutes is amended to read:

17 7.10 (6) MUNICIPAL JUDGE; CERTIFIED LIST. If candidates for the office of a
18 municipal judge who is elected under s. 755.01 (4) file nomination papers in the office
19 of the county clerk and any municipality served by the judge prepares its own ballots
20 for ~~voting machines~~ or an electronic voting system, the county clerk shall certify to
21 the municipal clerk of that municipality the names of the candidates for judge as soon
22 as possible after the last day for filing nomination papers and after certification by
23 the county board of canvassers of the results of any primary election.

24 **SECTION 63.** 7.15 (2) (c) of the statutes is amended to read:

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1 7.15 (2) (c) With the consent of the county clerk, municipalities may prepare
2 their own ballots whenever ~~voting machines or~~ an electronic voting systems are
3 system is used in elections where candidates for both local offices and national, state
4 or county offices appear on the ballot. This paragraph does not apply to cities under
5 par. (b).

6 **SECTION 64.** 7.15 (3) of the statutes is amended to read:

7 7.15 (3) BALLOT SUPPLY; SAMPLE BALLOTS. (a) Where ~~voting machines are used~~
8 ~~or where~~ electronic voting systems are employed, the municipal clerk shall provide
9 at least 2 duplicate sample ballots for each ward in diagram form showing the board
10 ~~or screen~~ inside ~~each voting machine or~~ the front of each ballot as it will appear in
11 the ~~voting machines or~~ booths on election day.

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

14 **SECTION 65.** 7.15 (6) of the statutes is amended to read:

15 7.15 (6) SUBSTITUTE BALLOTS. (a) The municipal clerk shall provide substitute
16 paper ballots in substantially the form of the original ballots whenever the necessary
17 original ballots are not delivered to the municipality, are destroyed, are lost or stolen
18 after delivery, are not ready for distribution or the supply is exhausted during polling
19 hours. The municipal clerk may also provide substitute paper ballots, together with
20 ballot boxes and voting booths, whenever ~~a voting machine or~~ an electronic voting
21 system is rendered inoperable by a malfunction which occurs within 24 hours of the
22 time set for opening of the polls. Paper ballots may be cast only in accordance with
23 the procedures prescribed in ss. 6.80 (2) and 7.37 (4).

24 (b) Upon receiving the substitute paper ballots accompanied by a statement
25 made under oath by the municipal clerk that the ballots have been prepared and

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1 furnished by the clerk to replace the original ballots which are not available, or to
2 substitute for ~~a voting machine or~~ an electronic voting system which has been
3 rendered inoperable by a malfunction which occurred within 72 hours of the time set
4 for opening of the polls, the election officials shall use the substitute ballots in the
5 same manner as if they had been original ballots.

6 **SECTION 66.** 7.23 (1) (h) of the statutes is amended to read:

7 7.23 (1) (h) Except as provided in par. (f), ballots at an election may be destroyed
8 no earlier than 14 days before the next regularly scheduled election but in no case
9 earlier than 30 days after any election.

10 **SECTION 67.** 7.23 (2) of the statutes is amended to read:

11 7.23 (2) If a recount is pending or if the time allowed for filing a recount petition
12 at any election or an appeal or petition for review of any recount determination or
13 decision at an election has not expired, no materials may be destroyed until after the
14 recount is completed and the applicable time period has expired. In addition, if there
15 is litigation pending with respect to a recount at an election, materials may be
16 destroyed and recording units or compartments may be cleared or erased only by
17 order of the court in which litigation is pending. Upon petition of the attorney
18 general or a district attorney or U.S. attorney for the affected jurisdiction, a circuit
19 judge for the affected jurisdiction may order that specified materials not be destroyed
20 or that specified ~~recorders,~~ units or compartments not be cleared or erased as
21 otherwise authorized under this subsection until the court so permits.

22 **SECTION 68.** 7.25 of the statutes is repealed.

23 **SECTION 69.** 7.30 (1) (a) of the statutes is amended to read:

24 7.30 (1) (a) Except as authorized under par. (b), there shall be 7 inspectors for
25 each polling place at each election. ~~Except as authorized in par. (b), in municipalities~~

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

15 **SECTION 70.** 7.37 (4) of the statutes is amended to read:

16 7.37 (4) BALLOTING PROCEDURE. At polling places which utilize paper ballots or
17 electronic voting systems ~~in which ballots are distributed to electors,~~ 2 inspectors
18 shall be assigned to take charge of the official ballots. They shall write their initials
19 on the back of each ballot and deliver to each elector as he or she enters the voting
20 booth one ballot properly endorsed by each of them. Where paper ballots are used,
21 the inspectors shall fold each ballot in the proper manner to be deposited before
22 delivering it to the elector. If asked, inspectors may instruct any elector as to the
23 proper manner of marking the ballot, but they may not give advice, suggestions,
24 express any preferences or make any requests as to the person for whom, the
25 question on which or the ballot on which the elector shall vote.

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1 **SECTION 71.** 7.41 (4m) of the statutes is created to read:

2 7.41 **(4m)** Any individual may, with reasonable prior notice to a municipal
3 clerk, inspect the area in which ballots relating to an election are stored after the date
4 of that election. This subsection does not authorize an individual to inspect ballots
5 or to require the breaking of seals on ballot bags or containers.

6 **SECTION 72.** 7.41 (5) of the statutes is amended to read:

7 7.41 **(5)** The board may promulgate rules that are consistent with the
8 requirements of sub. (2) regarding the proper conduct of individuals exercising the
9 ~~right~~ rights under ~~sub.~~ subs. (1) and (4m), including the interaction of those
10 individuals with inspectors and other election officials.

11 **SECTION 73.** 7.50 (2) (hm) of the statutes is repealed.

12 **SECTION 74.** 7.51 (2) (a) of the statutes is amended to read:

13 7.51 **(2)** (a) The inspectors shall first compare the poll lists, correcting any
14 mistakes until the poll lists agree. The chief inspector and the inspectors who are
15 responsible for recording electors under s. 6.79 shall verify the correctness of the poll
16 lists after the polls close by each signing their name thereto. ~~Where ballots are~~
17 ~~distributed to electors, the~~ The inspectors shall then open the ballot box and remove
18 and count the number of ballots therein without examination except as is necessary
19 to ascertain that each is a single ballot. If 2 or more ballots are folded together so as
20 to appear as a single ballot, the inspectors shall lay them aside until the count is
21 completed; and if, after a comparison of the count and the appearance of the ballots
22 it appears to a majority of the inspectors that the ballots folded together were voted
23 by the same person they may not be counted but the inspectors shall mark them as
24 to the reason for removal, set them aside and carefully preserve them. The inspectors
25 shall then proceed under par. (b).

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1 **SECTION 75.** 7.51 (2) (g) and (h) of the statutes are repealed.

2 **SECTION 76.** 7.51 (3) (c) of the statutes is repealed.

3 **SECTION 77.** 7.51 (6) of the statutes is amended to read:

4 7.51 (6) ELECTRONIC VOTING SYSTEMS. The procedure for canvassing of votes cast
5 at polling places utilizing an electronic voting system ~~in which ballots are distributed~~
6 ~~to electors~~ shall follow the procedure for canvassing paper ballots insofar as
7 applicable, and the procedure for canvassing of votes cast at polling places utilizing
8 an electronic voting machine shall follow the procedure for canvassing of mechanical
9 voting machines insofar as applicable, except as otherwise provided in ss. 5.85 to
10 5.89.

11 **SECTION 78.** 8.50 (3) (c) of the statutes, as affected by 2011 Wisconsin Act 75,
12 is amended to read:

13 8.50 (3) (c) Notwithstanding ss. ~~5.37(4)~~, 5.91 (6) and 6.80 (2) (f), whenever a
14 special partisan primary is held concurrently with the presidential preference
15 primary, an elector may choose the party column or ballot in which the elector will
16 cast his or her vote separately for each of the 2 primaries. Whenever 2 or more special
17 partisan primaries or one or more special partisan primaries and a partisan primary
18 are held concurrently, the procedure prescribed in ss. ~~5.37(4)~~, 5.91 (6) and 6.80 (2)
19 (f) applies.

20 **SECTION 79.** 8.55 (4) of the statutes is amended to read:

21 8.55 (4) Whenever the clerks of more than one jurisdiction are required under
22 this section to publish the same notice on the same day, they may publish one notice
23 only and share the cost under s. 10.07 (1).

24 **SECTION 80.** 9.01 (1) (a) 1. of the statutes, as affected by 2011 Wisconsin Acts
25 75 and 115, is amended to read:

ASSEMBLY BILL 746**SECTION 80**

1 9.01 (1) (a) 1. Any candidate voted for at any election, or any elector who voted
2 in an election in which one or more candidates seek office or who voted upon any
3 referendum question at any election, may petition for a recount of that election. The
4 petitioner shall file a verified petition or petitions with the proper clerk or body under
5 par. (ar) not earlier than the time of completion of the canvass following canvassing
6 of any valid provisional and absentee ballots under ss. 6.97 (4) and 7.515 (6) and,
7 except as provided in this subdivision, not later than 5 p.m. on the 3rd business day
8 following the last meeting day of the municipal or county board of canvassers
9 determining the election for that office or on that referendum question following
10 canvassing of all valid provisional and absentee ballots or, if more than one board of
11 canvassers makes the determination, not later than 5 p.m. on the 3rd business day
12 following the last meeting day of the last board of canvassers which makes a
13 determination following canvassing of all valid provisional and absentee ballots. If
14 the chairperson of the board or chairperson's designee makes the determination for
15 the office or the referendum question, the petitioner shall file the petition not earlier
16 than the last meeting day of the last county board of canvassers to make a statement
17 in the election or referendum following canvassing of all valid provisional and
18 absentee ballots and not later than 5 p.m. on the 3rd business day following the day
19 on which the government accountability board receives the last statement from a
20 county board of canvassers for the election or referendum following canvassing of all
21 valid provisional and absentee ballots.

22 **SECTION 81.** 9.01 (1) (a) 2. a. of the statutes is amended to read:

23 9.01 (1) (a) 2. a. That at the election the petitioner was a candidate for the office
24 in question or that the petitioner voted in the election for the office in issue or on the
25 referendum question in issue.

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1 **SECTION 82.** 9.01 (1) (ag) 1., 1m. and 2. of the statutes, as affected by 2011
2 Wisconsin Acts 75 and 115, are amended to read:

3 9.01 (1) (ag) 1. If the petitioner is a candidate for the office in issue or an elector
4 who voted on the referendum in issue and the difference between the votes cast for
5 the leading candidate and those cast for the ~~petitioner~~ candidate receiving the next
6 highest number of votes or the difference between the affirmative and negative votes
7 cast upon any referendum question is less than 10 if 1,000 or less votes are cast or
8 not more than 0.5% of the total votes cast for the office or on the question if more than
9 1,000 votes are cast following canvassing of all valid provisional and absentee
10 ballots, the petitioner is not required to pay a fee.

11 1m. If the petitioner is a candidate for the office in issue or an elector who voted
12 on the referendum in issue and the difference between the votes cast for the leading
13 candidate and those cast for the ~~petitioner~~ candidate receiving the next highest
14 number of votes or the difference between the affirmative and negative votes cast
15 upon any referendum question is at least 10 if 1,000 or less votes are cast or is more
16 than 0.5% but not more than 2% if more than 1,000 votes are cast following canvassing
17 of all valid provisional and absentee ballots, the petitioner shall pay a fee of \$5 for
18 each ward for which the petition requests a ballot recount, or \$5 for each municipality
19 for which the petition requests a recount where no wards exist.

20 2. If the petitioner is not a candidate for the office in issue, or if the petitioner
21 is a candidate for that office and the difference between the votes cast for the leading
22 candidate and those cast for the ~~petitioner~~ candidate receiving the next highest
23 number of votes or the difference between the affirmative and negative votes cast
24 upon any referendum question is more than 2% if more than 1,000 votes are cast
25 following canvassing of all valid provisional and absentee ballots, the petitioner shall

ASSEMBLY BILL 746**SECTION 82**

1 pay a fee equal to the actual cost of performing the recount in each ward for which
2 the petition requests a recount, or in each municipality for which the petition request
3 a recount where no wards exist.

4 **SECTION 83.** 9.01 (1) (b) 6. to 8. of the statutes are repealed.

5 **SECTION 84.** 9.01 (1) (b) 8m. and 8s. of the statutes are amended to read:

6 9.01 (1) (b) 8m. Where ~~a voting machine or an~~ electronic voting system is used,
7 and an error in the vote total as shown on the ~~machine or~~ record of votes cast is clearly
8 apparent, the board of canvassers may change the vote total as shown by the ~~machine~~
9 ~~or~~ system and certify or use a different total to certify a different result than is
10 indicated by the ~~machine or~~ system if there is evidence of a specific malfunction in
11 the ~~machine or~~ system, if the malfunction could reasonably have caused the error,
12 and if clear and convincing evidence exists which indicates the exact actual total
13 number of votes cast. The burden of demonstrating that a vote total shown on a
14 ~~machine or~~ record of votes cast is incorrect rests with the party seeking to change the
15 recorded result on the basis of clear and convincing evidence.

16 8s. If an electronic voting system is used ~~in which ballots are distributed to~~
17 ~~electors~~, and the board of canvassers makes a determination of elector intent under
18 s. 7.50, the board of canvassers shall add to the result generated by the automatic
19 tabulating equipment any votes counted by the board of canvassers in making its
20 determination.

21 **SECTION 85.** 9.01 (1) (b) 10. of the statutes is amended to read:

22 9.01 (1) (b) 10. Recounts at polling places utilizing an electronic voting system
23 ~~in which ballots are distributed to electors~~ shall be performed in accordance with the
24 procedure for recounting paper ballots insofar as applicable, except as provided in
25 s. 5.90. ~~Recounts at polling places utilizing electronic voting machines shall be~~

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1 performed in accordance with the procedure for recounting votes cast on mechanical
2 voting machines, insofar as applicable, except as provided in s. 5.90.

3 **SECTION 86.** 9.01 (2) of the statutes is amended to read:

4 9.01 (2) NOTICE TO CANDIDATES. When the recount concerns an election for an
5 office, the clerk or body with whom the petition is filed shall promptly prepare a copy
6 of the petition for delivery to each opposing candidate for the same office whose name
7 appears on the ballot that office other than the petitioner. In a recount proceeding
8 for a nomination to an office at a partisan primary, the clerk or body shall prepare
9 a copy of the petition for delivery to each opposing candidate other than the petitioner
10 for the same party nomination for the same office, to each opposing candidate for the
11 party nomination of each other party for the same office and to each independent
12 candidate qualifying to have his or her name placed on the ballot for the succeeding
13 election. A candidate or agent designated by a candidate may personally accept
14 delivery of a copy of the petition. Upon such delivery, the clerk or body shall require
15 the candidate or agent to sign a receipt therefor. If a candidate or agent does not
16 personally accept delivery, the clerk or body shall then promptly deliver the copies
17 of the petition to the sheriff, who shall promptly deliver the copies of the petition to
18 each candidate at the address given on the candidate's nomination papers, without
19 fee, in the manner provided for service of a summons in civil actions.

20 **SECTION 87.** 9.01 (3) of the statutes is amended to read:

21 9.01 (3) REPRESENTATION AND OBSERVATION. The petitioner, all opposing
22 candidates in the election in issue, and all interested persons shall be entitled to be
23 present in person and by counsel to observe the proceedings.

24 **SECTION 88.** 9.01 (4) of the statutes is amended to read:

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1 9.01 (4) RIGHT TO COMPLETE RECOUNT. Whenever a recount petition for part of
2 the wards within a jurisdiction or district, or for part of the municipalities within a
3 district where there are no wards, is filed under this section, ~~the opposing~~ any
4 ~~candidate, or for the office in issue,~~ any voter elector who voted in the election for
5 office in issue, or any other interested party including a municipality if on a
6 referendum question, may similarly file a petition for recount in any or all of the
7 remaining wards or municipalities in the jurisdiction or district. The petition shall
8 be filed not later than 5 p.m. 2 days after the board of canvassers completes the first
9 recount. The proper board of canvassers shall reconvene at 9 a.m. on the next
10 business day following the filing of the petition and proceed to recount the ballots in
11 all wards or municipalities specified and to otherwise review the allegations of fact
12 contained in the petition. Any errors shall be corrected.

13 **SECTION 89.** 9.01 (6) (a) of the statutes is amended to read:

14 9.01 (6) (a) Within 5 business days after completion of the recount
15 determination by the board of canvassers in all counties concerned, or within 5
16 business days after completion of the recount determination by the chairperson of
17 the board or the chairperson's designee whenever a determination is made by the
18 chairperson or designee, the petitioner or any candidate, or any elector when for a
19 referendum, aggrieved by the recount may appeal to circuit court. The appeal shall
20 commence by serving a written notice of appeal on the ~~other~~ petitioner and on all
21 candidates other than the petitioner and all other persons who filed a written notice
22 of appearance before each board of canvassers whose decision is appealed, or in the
23 case of a statewide recount, before the chairperson of the board or the chairperson's
24 designee. The appellant shall also serve notice on the board if the chairperson of the
25 board or the chairperson's designee is responsible for determining the election. The

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1 appellant shall serve the notice by certified mail or in person. The appellant shall
2 file the notice with the clerk of circuit court together with an undertaking and surety
3 in the amount approved by the court, conditioned upon the payment of all costs taxed
4 against the appellant.

5 **SECTION 90.** 9.01 (7) (a) of the statutes is amended to read:

6 9.01 (7) (a) The court with whom an appeal is filed shall forthwith issue an
7 order directing each affected county or municipal clerk or board to transmit
8 immediately all ballots, papers and records affecting the appeal to the clerk of court
9 or to impound and secure such ballots, papers and records, or both. The order shall
10 be served upon each affected county or municipal clerk or board, and upon the
11 petitioner and all ~~other~~ candidates and other persons who filed a written notice of
12 appearance before any board of canvassers involved in the recount.

13 **SECTION 91.** 10.01 (2) (b) of the statutes is amended to read:

14 10.01 (2) (b) Type B—The type B notice shall include the relevant facsimile
15 ballots and the relevant portions of voting instructions to electors under s. 10.02 for
16 each office or referendum and shall specify the date of the election. In counties or
17 municipalities where an electronic voting system ~~in which ballots are distributed to~~
18 ~~electors~~ is used, the notice shall include the information specified in s. 5.94. The type
19 B notice shall be published once by the county clerks, and for primaries and other
20 elections in municipalities or special purpose districts, once by the clerk of the
21 municipality or special purpose district on the day preceding each primary and other
22 election.

23 **SECTION 92.** 10.02 (2) (c) of the statutes is amended to read:

24 10.02 (2) (c) The facsimile ballots shall follow the voting instructions. The size
25 and style of type and the general display of the facsimile ballots shall be prescribed

ASSEMBLY BILL 746**SECTION 92**

1 by the board and shall conform to the form prescribed by the board under s. 7.08 (1)
2 (a). The party columns shall not exceed 2-1/6 inches in width and the ballot size may
3 be reduced. ~~Voting machine facsimile ballots shall show a reduced diagram of the~~
4 ~~front of the voting machine and instructions to electors on how to vote on the~~
5 ~~machine.~~ If the ballots in the wards or election districts within a county or
6 municipality are identical but for the names of different candidates, districts or
7 seats, the facsimile ballot may show the ballot for one ward or election district,
8 accompanied by a list of candidates, districts and seats to be voted upon in the other
9 wards or election districts.

10 **SECTION 93.** 10.02 (3) (a) of the statutes, as affected by 2011 Wisconsin Act 23,
11 is amended to read:

12 10.02 (3) (a) Upon entering the polling place and before being permitted to vote,
13 an elector shall state his or her name and address. If an elector is not registered to
14 vote, an elector may register to vote at the polling place serving his or her residence
15 if the elector presents proof of identification in a form specified by law unless the
16 elector is exempted from this requirement, and, if the document presented does not
17 constitute proof of residence, the elector provides proof of residence. ~~Where ballots~~
18 ~~are distributed to electors, the~~ The initials of 2 inspectors must appear on the ballot.
19 Upon being permitted to vote, the elector shall retire alone to a voting booth ~~or~~
20 ~~machine~~ and cast his or her ballot, except that an elector who is a parent or guardian
21 may be accompanied by the elector's minor child or minor ward. An election official
22 may inform the elector of the proper manner for casting a vote, but the official may
23 not in any manner advise or indicate a particular voting choice.

24 **SECTION 94.** 10.02 (3) (b) 1. of the statutes, as affected by 2011 Wisconsin Act
25 23, is amended to read:

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1 10.02 (3) (b) 1. The elector shall make a cross (X) next to ~~or separately depress~~
2 ~~the levers or buttons next to~~ each candidate's name for whom he or she intends to
3 vote, or shall insert or write in the name of a candidate.

4 **SECTION 95.** 10.02 (3) (b) 2. of the statutes, as affected by 2011 Wisconsin Act
5 32, is amended to read:

6 10.02 (3) (b) 2. At a partisan primary, the elector shall select the party ballot
7 of his or her choice and shall make a cross (X) next to ~~or depress the lever or button~~
8 ~~next to~~ the candidate's name for each office for whom the elector intends to vote, or
9 shall insert or write in the name of the elector's choice for a candidate.

10 **SECTION 96.** 10.02 (3) (b) 3. and 4. of the statutes are amended to read:

11 10.02 (3) (b) 3. When casting a presidential preference vote, the elector shall
12 select the party ballot of his or her choice and make a cross (X) next to ~~or depress the~~
13 ~~button or lever next to~~ the candidate's name for whom he or she intends to vote or
14 shall, in the alternative, make a cross (X) next to ~~or depress the button or lever next~~
15 ~~to~~ the words "Uninstructed delegation", or shall write in the name of his or her choice
16 for a candidate.

17 4. At a nonpartisan primary, the elector shall make a cross (X) next to ~~or~~
18 ~~depress the button or lever next to~~ the candidate's name for each office for whom he
19 or she intends to vote, or insert or write in the name of his or her choice for a
20 candidate.

21 **SECTION 97.** 10.02 (3) (c) of the statutes, as affected by 2011 Wisconsin Act 23,
22 is amended to read:

23 10.02 (3) (c) In presidential elections, the elector shall make a cross (X) next
24 to ~~or depress the button or lever next to~~ the set of candidates for president and vice

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1 president for whom he or she intends to vote. A vote for candidates for president and
2 vice president is a vote for the presidential electors of those candidates.

3 **SECTION 98.** 10.02 (3) (d) of the statutes is amended to read:

4 10.02 (3) (d) On referenda questions, the elector shall make a cross (X) next
5 to ~~or depress the button or lever next to~~ the answer which he or she intends to give.

6 **SECTION 99.** 10.02 (3) (e) of the statutes is amended to read:

7 10.02 (3) (e) The vote should not be cast in any other manner. If the elector
8 spoils a ballot, he or she shall return it to an election official who shall issue another
9 in its place, but not more than 3 ballots shall be issued to any one elector. If the ballot
10 has not been initialed by 2 inspectors or is defective in any other way, the elector shall
11 return it to the election official, who shall issue a proper ballot in its place. Not more
12 than 5 minutes' time shall be allowed inside a voting booth ~~or machine~~. Unofficial
13 ballots or a memorandum to assist the elector in marking his or her ballot may be
14 taken into the booth and copied. The sample ballot shall not be shown to anyone so
15 as to reveal how the ballot is marked.

16 **SECTION 100.** 10.02 (3) (f) of the statutes is amended to read:

17 10.02 (3) (f) After an official paper ballot is marked, it shall be folded so the
18 inside marks do not show but so the printed endorsements and inspectors' initials
19 on the outside do show. After casting his or her vote, the elector shall leave the voting
20 ~~machine or booth, and where paper ballots are distributed to the electors,~~ deposit his
21 or her folded ballot in the ballot box or deliver it to an inspector for deposit in the box,
22 and shall leave the polling place promptly.

23 **SECTION 101.** 10.06 (3) (am) and (bm) of the statutes are amended to read:

24 10.06 (3) (am) As soon as possible following the deadline for filing nomination
25 papers for any municipal election when there is to be an election for a county or state

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1 office or a county or statewide referendum, but no later than 3 days after such
2 deadline, the municipal clerk of each municipality in which ~~voting machines or~~
3 ballots containing the names of candidates for both local offices and national, state
4 or county offices are used shall certify the list of candidates for municipal office to the
5 county clerk if a primary is required, unless the municipality prepares its own ballots
6 under s. 7.15 (2) (c).

7 (bm) As soon as possible following the municipal canvass of the primary vote
8 or the qualification of the candidates under s. 8.05 (1) (j) when a municipal caucus
9 is held, if there is to be an election for a county or state office or a county or statewide
10 referendum, but no later than 3 days after such date, the municipal clerk of each
11 municipality in which ~~voting machines or~~ ballots containing the names of candidates
12 for both local offices and national, state or county offices are used shall certify the list
13 of candidates for municipal office and municipal referenda appearing on the ballot
14 to the county clerk, unless the municipality prepares its own ballots under s. 7.15 (2)
15 (c).

16 **SECTION 102.** 10.06 (3) (e) of the statutes is amended to read:

17 10.06 (3) (e) When ~~electronic or mechanical voting machines or~~ an electronic
18 voting systems in which ballots are distributed to electors are system is used in a
19 municipality at a municipal election, the municipal clerk shall publish a type B
20 notice on the Monday before the election. The notice shall include all offices and
21 questions to be voted on at the election. The cost of this notice shall be shared under
22 s. 5.68 (2) and (3).

23 **SECTION 103.** 10.07 (1) of the statutes is renumbered 10.07 and amended to
24 read:

ASSEMBLY BILL 746**SECTION 103**

1 **10.07 Combination of notices; cost.** ~~Except as provided in sub. (2) in the case~~
2 of ~~voting machine ballots, whenever~~ Whenever any county clerk or municipal or
3 school district clerks within the same county are directed to publish any notice or
4 portion of a notice under this chapter on the same date in the same newspaper, the
5 text of which is identical, the clerks may publish one notice only. The cost of
6 publication of such notice or the portion of the notice required shall be apportioned
7 equally between the county and each municipality or school district sharing in its
8 publication.

9 **SECTION 104.** 10.07 (2) of the statutes is repealed.

10 **SECTION 105.** 12.13 (2) (b) 6. of the statutes is amended to read:

11 12.13 (2) (b) 6. Intentionally permit or cause a ~~voting machine,~~ voting device
12 or automatic tabulating equipment to fail to correctly register or record a vote cast
13 thereon or inserted therein, or tamper with or disarrange the ~~machine,~~ device or
14 equipment or any part or appliance thereof; cause or consent to the ~~machine,~~ device
15 or automatic tabulating equipment being used for voting at an election with
16 knowledge that it is out of order or is not perfectly set and adjusted so that it will
17 correctly register all ballots inserted therein or record all votes cast ~~thereon or~~
18 ~~inserted therein~~ on the ballots; with the purpose of defrauding or deceiving any
19 elector, cause doubt for what party, candidate or proposition a vote will be cast or
20 cause the vote for one party, candidate or proposition to be cast so it appears to be cast
21 for another; or remove, change or mutilate a ballot on a voting ~~machine,~~ device or a
22 ballot to be inserted into automatic tabulating equipment, or do any similar act
23 contrary to chs. 5 to 12.

24 **SECTION 106.** 12.13 (3) (f) of the statutes is amended to read:

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1 12.13 (3) (f) Before or during any election, tamper with ~~voting machines~~, voting
2 devices or automatic tabulating equipment readied for voting or the counting of
3 votes; disarrange, deface, injure or impair any such ~~machine~~, device or equipment;
4 or mutilate, injure or destroy a ballot placed ~~or displayed~~ on a voting ~~machine~~ or
5 device, or to be placed or displayed on any such ~~machine~~, device or automatic
6 tabulating equipment or any other appliance used in connection with the ~~machine~~,
7 device or equipment.

8 **SECTION 107.** 12.13 (3) (j) of the statutes is amended to read:

9 12.13 (3) (j) When called upon to assist an elector who cannot read or write, has
10 difficulty in reading, writing or understanding English, ~~or is unable to mark a ballot~~
11 ~~or depress a lever or button on a voting machine~~, inform the elector that a ballot
12 contains names or words different than are printed or displayed on the ballot with
13 the intent of inducing the elector to vote contrary to his or her inclination,
14 intentionally fail to cast a vote in accordance with the elector's instructions or reveal
15 the elector's vote to any 3rd person.

16 **SECTION 108.** 12.13 (3) (y) of the statutes is repealed.

17 **SECTION 109.** 12.60 (1) (a) of the statutes is amended to read:

18 12.60 (1) (a) Whoever violates s. 12.09, 12.11 or 12.13 (1), (2) (b) 1. to 7. or (3)
19 (a), (e), (f), (j), (k), (L), (m), (~~y~~) or (z) is guilty of a Class I felony.

20 **SECTION 110.** 67.05 (3) (a) 7. of the statutes is amended to read:

21 67.05 (3) (a) 7. Whenever the clerks of more than one jurisdiction are required
22 under this section to publish the same notice on the same day, they may publish one
23 notice only and share the cost under s. 10.07 (1).

24 **SECTION 111.** 120.06 (11) of the statutes is amended to read:

