



2021 ASSEMBLY BILL 1091

March 7, 2022 - Introduced by Representatives SPREITZER, ANDRACA, CABRERA, CONLEY, CONSIDINE, HEBL, HONG, OHNSTAD, ORTIZ-VELEZ, SHELTON, STUBBS and VRUWINK, cosponsored by Senators CARPENTER, AGARD and BEWLEY. Referred to Committee on Campaigns and Elections.

1 **AN ACT** *to repeal* 5.35 (6) (b), 5.51 (7), 5.81 (4), 5.91 (6), 7.50 (1) (d) and 8.50 (3)
2 (c); *to renumber and amend* 5.37 (4); and *to amend* 5.02 (16m), 5.62 (1), 5.62
3 (2), 5.62 (3), 5.655 (1), 5.84 (1), 5.91 (1) and (3), 6.80 (2) (am), 6.80 (2) (f), 6.87
4 (4) (b) 1., 7.08 (2) (b), 7.50 (2) (g), 8.16 (1), (6) and (7), 8.17 (1) (a), 8.20 (9), 8.50
5 (3) (b), 9.10 (3) (e), 10.02 (3) (b) 2., 15.61 (1) (a) 6. and 15.62 (1) (a) 6. of the
6 statutes; **relating to:** authorizing electors to vote in the primary of more than
7 one political party.

Analysis by the Legislative Reference Bureau

Under current law, a voter in a partisan primary election may cast a ballot or vote in the column of only one major political party, regardless of the number of candidates who are running for office in that party, if any. Similarly, a voter in a partisan primary may vote for any of the independent candidates for state office, but if the voter chooses this option, he or she may not vote for any party candidates for any office. Candidates of minor parties appear on the ballot as independent candidates.

This bill permits a voter in a partisan primary to “split tickets,” designating the candidate of his or her choice for each office, including the offices of governor and lieutenant governor, regardless of party affiliation. The bill also allows a voter to vote for independent candidates for one or more state offices in a partisan primary, in

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addition to party candidates for one or more state or county offices. Under the bill, a voter may still vote for only one candidate for each office. The voting procedure at the general election and other partisan elections is unaffected by the bill.

The bill initially applies to voting at the 2022 partisan primary election.

For further information see the state 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 (16m) of the statutes is amended to read:

2 5.02 (**16m**) "Recognized political party" means a political party ~~which~~ that
3 qualifies for a separate ~~ballot or column~~ or row on partisan primary and election
4 ballots under s. 5.62 (1) (b) or (2).

5 **SECTION 2.** 5.35 (6) (b) of the statutes is repealed.

6 **SECTION 3.** 5.37 (4) of the statutes is renumbered 5.37 (4) (intro.) and amended
7 to read:

8 5.37 (**4**) (intro.) Voting machines may be used at primary elections when they
9 comply with subs. (1) and (2) and the following provisions: ~~All candidates' names~~

10 (a) Each candidate's name entitled to appear on the ~~ballots~~ ballot at the
11 primary and the party that he or she represents shall appear on the machine; the
12 elector ~~cannot vote for candidates of more than one party, whenever the restriction~~
13 applies; the elector may secretly select the party for which he or she wishes to vote;
14 the,

15 (b) The elector may vote for as many candidates for each office as he or she is
16 lawfully entitled to vote for, but no more.

17 **SECTION 4.** 5.51 (7) of the statutes is repealed.

18 **SECTION 5.** 5.62 (1) of the statutes is amended to read:

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

21 (b) 1. Except as provided in subd. 2. and s. 5.64 (1) (e) 2., every recognized
22 political party listed on the official ballot at the last gubernatorial election whose
23 candidate for any statewide office received at least 1 percent of the total votes cast
24 for that office and, if the last general election was also a presidential election, every
25 recognized political party listed on the ballot at that election whose candidate for

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1 president received at least 1 percent of the total ~~vote~~ votes cast for that office shall
2 have ~~a separate primary ballot or one or more separate columns or rows on the~~
3 ~~primary ballot as prescribed in par. (a) and a separate column on the general election~~
4 ~~ballot~~ at the partisan primary and general election in every ward and election
5 district. An organization which ~~that~~ was listed as “independent” at the last general
6 election and whose candidate meets the same qualification shall receive the same
7 ballot status upon petition ~~of~~ to the commission by the chairperson and secretary of
8 the organization ~~to the commission~~ requesting such status and specifying their party
9 name, which may not duplicate the name of an existing party. A petition under this
10 subdivision may be filed no later than 5 p.m. on April 1 in the year of each general
11 election.

12 2. Subdivision 1. applies to a party within any assembly district or county at
13 any partisan primary election only if at least one candidate of the party for any
14 national, state, or county office qualifies to have his or her name appear on the ballot
15 under the name of that party within that assembly district or county. The county
16 clerk or county board of election commissioners shall provide ~~a combined separate~~
17 ~~ballot or one or more separate columns or rows on the ballot~~ that will permit an
18 elector to cast a vote for a write-in candidate for the nomination of any such party
19 for each national, state, and county office whenever that party qualifies to be
20 represented ~~on a separate primary ballot or in one or more separate columns or rows~~
21 under subd. 1. but does not qualify under this subdivision. The ballot shall include
22 the name of each party qualifying for ~~a separate ballot or one or more separate~~
23 columns or rows on the ballot under each office, with the names of the candidates for
24 each such party appearing in the same order in which the ~~ballots~~ columns or rows
25 of the parties would appear under par. (a).

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1 **SECTION 6.** 5.62 (2) of the statutes is amended to read:

2 5.62 (2) (a) Except as provided in par. (b) and s. 5.64 (1) (e) 2., any political
3 organization may be represented ~~on a separate primary ballot or~~ in one or more
4 separate columns or rows on the partisan primary ballot as prescribed in sub. (1) (a)
5 and in a separate column or row on the general election ballot in every ward and
6 election district. To qualify for a separate ~~ballot~~ column or row under this paragraph,
7 the political organization shall, not later than 5 p.m. on April 1 in the year of the
8 partisan primary, file with the commission a petition requesting a separate ballot
9 status column or row on the partisan primary ballot. The petition shall be signed by
10 at least 10,000 electors, including at least 1,000 electors residing in each of at least
11 3 separate congressional districts. The petition shall conform to the requirements
12 of s. 8.40. No signature obtained before January 1 in the year of filing is valid. When
13 the candidates of a political organization filing a valid petition fulfill the
14 requirements prescribed by law, they shall appear ~~on a separate ballot or~~ in one or
15 more separate columns or rows on the ballot for the period ending with the following
16 general election.

17 (b) Paragraph (a) applies to a party within any assembly district or county at
18 any partisan primary election only if at least one candidate of the party for any
19 national, state, or county office qualifies to have his or her name appear on the ballot
20 under the name of that party within that assembly district or county. The county
21 clerk or county board of election commissioners shall provide ~~a combined separate~~
22 ~~ballot or~~ one or more separate columns or rows on the ballot that will permit an
23 elector to cast a vote for a write-in candidate for the nomination of any such party
24 for each national, state, and county office whenever that party qualifies to be
25 represented ~~on a separate primary ballot or~~ in one or more separate columns or rows

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1 under par. (a) but does not qualify under this paragraph. The ballot shall include the
2 name of each party qualifying for ~~a separate ballot or~~ one or more separate columns
3 or rows on the ballot under each office, with the names of the candidates for each such
4 party appearing in the same order in which the ~~ballots~~ columns or rows of the parties
5 would appear under sub. (1) (a).

6 **SECTION 7.** 5.62 (3) of the statutes is amended to read:

7 5.62 (3) The commission shall designate the official primary ballot
8 arrangement for statewide offices and district attorney within each prosecutorial
9 district by using the same procedure as provided in s. 5.60 (1) (b). On each ~~ballot and~~
10 ~~on each~~ separate column or row on the ballot, the candidates for office shall be listed
11 together with the offices ~~which~~ that they seek in the following order whenever these
12 offices appear on the partisan primary ballot: governor, lieutenant governor,
13 attorney general, secretary of state, state treasurer, U.S. senator, U.S.
14 representative in congress, state senator, representative to the assembly, district
15 attorney, and the county offices.

16 **SECTION 8.** 5.655 (1) of the statutes is amended to read:

17 5.655 (1) Whenever a separate ballot is required to be used, a municipality may
18 use a single ballot to facilitate the use of voting machines or an electronic voting
19 system or, if the municipality employs paper ballots, may use a consolidated paper
20 ballot that is authorized under sub. (2). If a municipality uses a single ballot in lieu
21 of separate ballots, the ballot shall include a separate column or row for any office,
22 or referendum or party for which a separate ballot is required by law and the ballot
23 shall be distributed only to electors who are eligible to vote for all of the offices and
24 referenda appearing on the ballot.

25 **SECTION 9.** 5.81 (4) of the statutes is repealed.

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1 **SECTION 10.** 5.84 (1) of the statutes is amended to read:

2 5.84 (1) Where any municipality employs an electronic voting system which
3 that utilizes automatic tabulating equipment, either at the polling place or at a
4 central counting location, the municipal clerk shall, on any day not more than 10
5 days prior to the election day on which the equipment is to be utilized, have the
6 equipment tested to ascertain that it will correctly count the votes cast for all offices
7 and on all measures. Public notice of the time and place of the test shall be given by
8 the clerk at least 48 hours prior to the test by publication of a class 1 notice under
9 ch. 985 in one or more newspapers published within the municipality if a newspaper
10 is published therein, otherwise in a newspaper of general circulation therein. The
11 test shall be open to the public. The test shall be conducted by processing a
12 preaudited group of ballots so marked as to record a predetermined number of valid
13 votes for each candidate and on each referendum. The test shall include for each
14 office one or more ballots ~~which~~ that have votes in excess of the number allowed by
15 law and, for a partisan primary election, one or more ballots which have votes cast
16 for candidates of more than one recognized political party, in order to test the ability
17 of the automatic tabulating equipment to reject such votes. If any error is detected,
18 the municipal clerk shall ascertain the cause and correct the error. The clerk shall
19 make an errorless count before the automatic tabulating equipment is approved by
20 the clerk for use in the election.

21 **SECTION 11.** 5.91 (1) and (3) of the statutes are amended to read:

22 5.91 (1) It enables an elector to vote in secrecy ~~and to select the party for which~~
23 ~~an elector will vote in secrecy at a partisan primary election.~~

24 (3) ~~Except in primary elections, it~~ It enables an elector to vote for a ticket
25 selected in part from the nominees of one party, and in part from the nominees of

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1 other parties, and in part from independent candidates and, except in the case of
2 independent candidates at primary elections, in part of from candidates whose
3 names are written in by the elector.

4 **SECTION 12.** 5.91 (6) of the statutes is repealed.

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

6 6.80 (2) (am) In partisan primaries, an elector may vote for a person as the
7 candidate of the party of the elector's choice, if that person's name does not appear
8 on the official ballot of that party, by writing in the name of the person in the space
9 provided on the ballot or the ballot provided for that purpose, or where voting
10 machines are used, in the irregular ballot device, designating the party for which the
11 elector desires such person to be the nominee.

12 **SECTION 14.** 6.80 (2) (f) of the statutes is amended to read:

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

25 **SECTION 15.** 6.87 (4) (b) 1. of the statutes is amended to read:

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1 6.87 (4) (b) 1. Except as otherwise provided in s. 6.875, an elector voting
2 absentee, other than a military elector or an overseas elector, shall make and
3 subscribe to the certification before one witness who is an adult U.S. citizen. A
4 military elector or an overseas elector voting absentee, regardless of whether the
5 elector qualifies as a resident of this state under s. 6.10, shall make and subscribe
6 to the certification before one witness who is an adult but who need not be a U.S.
7 citizen. The absent elector, in the presence of the witness, shall mark the ballot in
8 a manner that will not disclose how the elector's vote is cast. The elector shall then,
9 still in the presence of the witness, fold the ballots so each is separate and so that the
10 elector conceals the markings thereon and deposit them in the proper envelope. If
11 a consolidated ballot under s. 5.655 is used, the elector shall fold the ballot so that
12 the elector conceals the markings thereon and deposit the ballot in the proper
13 envelope. If proof of residence under s. 6.34 is required and the document enclosed
14 by the elector under this subdivision does not constitute proof of residence under s.
15 6.34, the elector shall also enclose proof of residence under s. 6.34 in the envelope.
16 Except as provided in s. 6.34 (2m), proof of residence is required if the elector is not
17 a military elector or an overseas elector and the elector registered by mail or by
18 electronic application and has not voted in an election in this state. If the elector
19 requested a ballot by means of facsimile transmission or electronic mail under s. 6.86
20 (1) (ac), the elector shall enclose in the envelope a copy of the request which bears an
21 original signature of the elector. The elector may receive assistance under sub. (5).
22 The return envelope shall then be sealed. The witness may not be a candidate. The
23 envelope shall be mailed by the elector, or delivered in person, to the municipal clerk
24 issuing the ballot or ballots. If the envelope is mailed from a location outside the
25 United States, the elector shall affix sufficient postage unless the ballot qualifies for

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1 delivery free of postage under federal law. ~~Failure to return an unused ballot in a~~
2 ~~primary does not invalidate the ballot on which the elector's votes are cast. Return~~
3 ~~of more than one marked ballot in a primary or return of a ballot prepared under s.~~
4 ~~5.655 or a ballot used with an electronic voting system in a primary which is marked~~
5 ~~for candidates of more than one party invalidates all votes cast by the elector for~~
6 ~~candidates in the primary.~~

7 **SECTION 16.** 7.08 (2) (b) of the statutes is amended to read:

8 7.08 (2) (b) The certified list of candidates for president and vice president who
9 have been nominated at a national convention by a party entitled to a separate
10 column or row on the partisan primary ballot or for whom electors have been
11 nominated under s. 8.20 shall be sent as soon as possible after the closing date for
12 filing nomination papers, but no later than the deadlines established in s. 10.06.

13 **SECTION 17.** 7.50 (1) (d) of the statutes is repealed.

14 **SECTION 18.** 7.50 (2) (g) of the statutes is amended to read:

15 7.50 (2) (g) In partisan primaries, if an elector writes in the name of an
16 individual ~~on a ballot~~ in a column or row other than the one on which that individual's
17 name is shown as a candidate, the write-in vote may not be counted.

18 **SECTION 19.** 8.16 (1), (6) and (7) of the statutes are amended to read:

19 8.16 (1) Except as provided in sub. (2), the person who receives the greatest
20 number of votes for an office ~~on a party ballot~~ at any partisan primary, regardless of
21 whether the person's name appears on the ballot, shall be the party's candidate for
22 the office, and the person's name shall so appear on the official ballot at the next
23 election.

24 (6) The persons who receive the greatest number of votes respectively for the
25 offices of governor and lieutenant governor ~~on for any party ballot~~ at a primary shall

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1 be the party's joint candidates for the offices, and their names shall so appear on the
2 official ballot at the next election.

3 (7) Nominees chosen at a national convention and under s. 8.18 (2) by each
4 party entitled to a separate column or row on a partisan primary ballot shall be the
5 party's candidates for president, vice president, and presidential electors. The state
6 or national chairperson of each such party shall certify the names of the party's
7 nominees for president and vice president to the commission no later than 5 p.m. on
8 the first Tuesday in September preceding a presidential election. Each name shall
9 be in one of the formats authorized in s. 7.08 (2) (a).

10 **SECTION 20.** 8.17 (1) (a) of the statutes is amended to read:

11 8.17 (1) (a) Political parties qualifying for a separate column or row on the
12 partisan primary ballot under s. 5.62 (1) (b) or (2) shall elect their party
13 committeemen and committeewomen as provided under sub. (5) (b). The function of
14 committeemen and committeewomen is to represent their neighborhoods in the
15 structure of a political party. Committeemen and committeewomen shall act as
16 liaison representatives between their parties and the residents of the election
17 districts in which they serve. Activities of committeemen and committeewomen
18 shall include, but not be limited to, identifying voters; assistance in voter
19 registration drives; increasing voter participation in political parties; polling and
20 other methods of passing information from residents to political parties and elected
21 public officials; and dissemination of information from public officials to residents.
22 For assistance in those and other activities of interest to a political party, each
23 committeeman and committeewoman may appoint a captain to engage in these
24 activities in each ward, if the election district served by the committeeman or
25 committeewoman includes more than one ward. In an election district ~~which~~ that

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1 includes more than one ward, the committeeman or committeewoman shall
2 coordinate the activities of the ward captains in promoting the interests of his or her
3 party.

4 **SECTION 21.** 8.20 (9) of the statutes is amended to read:

5 8.20 (9) Persons nominated by nomination papers without a recognized
6 political party designation shall be placed on the official ballot at the general election
7 and at any partisan election to the right or below the recognized political party
8 candidates in their own column or row designated "Independent",." If the candidate's
9 name already appears under a recognized political party it may not be listed on the
10 independent ~~ballot~~, column or row.

11 **SECTION 22.** 8.50 (3) (b) of the statutes is amended to read:

12 8.50 (3) (b) Except as otherwise provided in this section, the provisions for the
13 partisan primary under s. 8.15 are applicable to all partisan primaries held under
14 this section, and the provisions for spring primaries under s. 8.10 are applicable to
15 all nonpartisan primaries held under this section. In a special partisan primary or
16 election, the order of the parties on the ballot shall be the same as provided under
17 s. 5.62 (1) or 5.64 (1) (b). No primary is required for a nonpartisan election in which
18 not more than 2 candidates for an office appear on the ballot or for a partisan election
19 in which not more than one candidate for an office appears ~~on~~ in the ballot column
20 or row of each recognized political party on the ballot. In every special election except
21 a special election for nonpartisan state office where no candidate is certified to
22 appear on the ballot, a space for write-in votes shall be provided on the ballot,
23 regardless of whether a special primary is held.

24 **SECTION 23.** 8.50 (3) (c) of the statutes is repealed.

25 **SECTION 24.** 9.10 (3) (e) of the statutes is amended to read:

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1 9.10 (3) (e) For any partisan office, a recall primary shall be held for each
2 political party ~~which~~ that is entitled to a separate column or row on the partisan
3 primary ballot under s. 5.62 (1) (b) or (2) and from which more than one candidate
4 competes for the party's nomination in the recall election. The primary ballot shall
5 be prepared in accordance with s. 5.62, insofar as applicable. The person receiving
6 the highest number of votes in the recall primary for each political party shall be that
7 party's candidate in the recall election. Independent candidates shall be shown on
8 the ballot for the recall election only.

9 **SECTION 25.** 10.02 (3) (b) 2. of the statutes is amended to read:

10 10.02 (3) (b) 2. At a partisan primary, the elector shall select the ~~party ballot~~
11 candidate of his or her choice for each office and shall make a cross (X) next to or
12 depress the lever or button next to the candidate's name for each office for whom the
13 elector intends to vote, or shall insert or write in the name of the elector's choice for
14 a candidate.

15 **SECTION 26.** 15.61 (1) (a) 6. of the statutes is amended to read:

16 15.61 (1) (a) 6. For each political party, other than the 2 major political parties,
17 qualifying for a separate ~~ballot~~ column or row under s. 5.62 (1) (b) or (2) whose
18 candidate for governor received at least 10 percent of the vote in the most recent
19 gubernatorial election, one member, nominated by the governor from a list of 3
20 individuals selected by the chief officer of that political party, and with the advice and
21 consent of a majority of the members of the senate confirmed.

22 **SECTION 27.** 15.62 (1) (a) 6. of the statutes is amended to read:

23 15.62 (1) (a) 6. For each political party, other than the 2 major political parties,
24 qualifying for a separate ~~ballot~~ column or row under s. 5.62 (1) (b) or (2) whose
25 candidate for governor received at least 10 percent of the vote in the most recent

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1 gubernatorial election, one member, nominated by the governor from a list of 3
2 individuals selected by the chief officer of that political party, and with the advice and
3 consent of a majority of the members of the senate confirmed.

4 **SECTION 28. Initial applicability.**

5 (1) This act first applies with respect to voting at the 2022 partisan primary
6 election.

7 (END)