



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Regularly Scheduled, Special, and Recall Elections

In Wisconsin, elections are held for a variety of purposes, as outlined in state statute. Regularly scheduled elections – the spring primary, spring election, partisan primary, general election, and presidential preference primary – are held to elect individuals to federal, state, and local offices. Special elections are held to fill vacancies in elected offices and to conduct referenda. Recall elections are held to determine whether an elected official will be recalled from, or retained in, an elected office.

This Information Memorandum describes the regularly scheduled elections, as well as special elections, referenda, and recall elections.

REGULARLY SCHEDULED ELECTIONS

SPRING PRIMARY AND SPRING ELECTION

Under Wisconsin law, the spring election is held on the first Tuesday in April for the purpose of electing judicial, educational, and municipal officers, nonpartisan county officers, and sewerage commissioners. The presidential preference primary is held concurrently with the spring election. When held, the spring primary takes place on the third Tuesday in February to nominate nonpartisan candidates to be voted on at the spring election. [s. 5.02 (21) and (22), Stats.]

The law requires a spring primary to be held in certain situations. For example, a primary must be held if more than two candidates file nomination papers for the office of state superintendent, for justice of the Wisconsin Supreme Court, for court of appeals judge in the same district, or for judge of the same branch of circuit court. A primary must be held in Milwaukee County whenever there are more than twice the number of candidates to be elected to any judicial office within the county, to the county board of supervisors from any one district, or to the office of comptroller. In the City of Milwaukee, a primary must be held whenever there are more than two candidates for member of the board of school directors at-large or from any election district in any year. In addition, a primary must be held in an election for county board supervisor whenever three or more candidates file nomination papers. [s. 8.11 (2), (2m), (3), and (5), Stats.]

The law also permits a spring primary in certain circumstances; specifically, cities and villages may hold primaries for the nomination of candidates for a city or village office. A city's or village's governing body may, not later than three days after the deadline for filing nomination papers, vote to hold a spring primary. A city or village may also require, by charter ordinance, a primary to be held whenever three or more candidates file nomination papers for a city or village office.

In addition, whenever a number of electors equal to at least 10% of the vote for governor in the city or village at the last general election file a petition conforming to certain statutory requirements requesting a primary for a city or village office, a primary must be held for a specific election. However, whenever the number of candidates for any city or village office does not exceed twice the number to be elected to the office, no primary may be held for the office and all of the candidates' names must appear on the ballot at the election. [s. 8.11 (1) and (1m), Stats.]

When a primary has been held, only those names of candidates nominated at the primary may appear on the official spring election ballot. [s. 8.11 (4), Stats.]

PARTISAN PRIMARY AND GENERAL ELECTION

The general election is held in even-numbered years on the Tuesday after the first Monday in November to elect U.S. senators and representatives, presidential electors, state senators and representatives, district attorneys, state officers other than the state superintendent and judicial officers, and county officers other than supervisors and county executives. [s. 5.02 (5), Stats.]

The partisan primary is held on the second Tuesday in August for the purpose of nominating candidates to be placed on the general election ballot. Generally, the person who receives the most votes for an office on a party ballot after the partisan primary becomes the party's candidate for that office, and his or her name is placed on the ballot for the general election. In addition, all independent candidates appear on the general election ballot. [ss. 5.02 (12s), 8.16 (1), and 8.20 (9), Stats.]

PRESIDENTIAL PREFERENCE PRIMARY

In a presidential election year, voters are given the opportunity at the spring election to vote for a candidate to be the presidential candidate for a political party. Unless a consolidated ballot is used, there must be a separate ballot for each recognized political party filing a certification indicating that it will participate in the presidential preference primary. The ballot must list the names of all potential candidates determined in the presidential preference selection process.¹ In addition, the ballot must afford the voter an opportunity to nominate another potential candidate by write-in vote or to vote for an uninstructed delegation to the party convention. [s. 5.60 (8) (am), Stats.]

The Elections Commission must notify each state party organization chairperson of the results of the presidential preference primary within the state and within each congressional district by May 15 following the presidential preference primary. [s. 8.12 (3), Stats.]

OTHER ELECTIONS

Wisconsin law also provides for a number of other elections that are held when the need arises, including special elections, referenda, local initiative, and recall elections.

¹ For additional information on the presidential preference selection process, see Legislative Council Information Memorandum IM-2018-08, *Nomination of Candidates* (July 27, 2018).

SPECIAL ELECTIONS TO FILL VACANCIES

Special elections are held to fill elected offices that become vacant during the term of office or to conduct a referendum. Special elections to fill vacancies are described in this section, while referenda are described in the following section.

The statutes specify the procedure to be used in filling vacancies for the following offices: (1) U.S. Senate and House of Representatives; (2) executive state offices except the offices of governor, lieutenant governor, and district attorney; (3) judicial and legislative state offices; (4) county, city, village, and town offices; (5) offices of municipal judge; and (6) member of the board of school directors in the Milwaukee Public Schools (MPS) system. In addition, state legislative offices may be filled by special election in anticipation of the occurrence of a vacancy. [s. 8.50 (intro.), Stats.]

Timing

Generally, no special election may be held after February 1 preceding the spring election unless it is held on the same day as the spring election, nor after August 1 preceding the general election unless it is held on the same day as the general election, until the day after that election. [s. 8.50 (intro.), Stats.]

The date for the special election may not be less than 62 nor more than 77 days from the date of the order for special election, except when the special election is held to fill a national office or on the day of the general election or spring election. If a special election is held concurrently with the spring election, the special election may be ordered not earlier than 92 days prior to the spring primary and not later than 49 days prior to that primary. If a special election is held concurrently with the general election or a special election is held to fill a national office, the special election may be ordered not earlier than 122 days prior to the partisan primary or special primary, respectively, and not later than 92 days prior to that primary. [s. 8.50 (2) (a), Stats.]

If a primary is required, the primary must be held on the day that is four weeks before the day of the special election. However, when the special election is held on the same day as the general election, the special primary must be held on the same day as the partisan primary or, if the special election is held concurrently with the spring election, the primary must be held concurrently with the spring primary. When the special election is held on the Tuesday after the first Monday in November of an odd-numbered year, the primary must be held on the second Tuesday of August in that year. [s. 8.50 (2) (b), Stats.]

Filling Specific Positions

The statutes specify when certain vacancies must be filled by special elections and provide guidance for filling certain other vacancies. The statutes provide the following guidance:

- **U.S. senator or representative.** A vacancy in the office of U.S. senator or representative occurring prior to the second Tuesday in April in the year of the general election must be filled at a special primary and election. A vacancy in that office occurring between the second Tuesday in April and the second Tuesday in May in the year of the general election must be filled at the partisan primary and general election.
- **State constitutional officers.** A vacancy in the office of secretary of state, state treasurer, attorney general, or state superintendent, occurring more than six months before the expiration of the current term, may be filled at a special election.

- **State senator or representative.** Any vacancy in the office of state senator or representative occurring before the second Tuesday in May in the year in which a regular election is held to fill that seat must be filled as promptly as possible by special election. However, any vacancy in those offices occurring after the close of the last regular floorperiod of the Legislature held during the term must be filled only if a special session or extraordinary floorperiod of the Legislature is called or a veto review period is scheduled during the remainder of the term. The special election to fill the vacancy must be ordered, if possible, so the new member may participate in the special session or floorperiod.
- **Anticipated state legislative vacancy.** Whenever a member of the Legislature is elected to another office after the commencement of his or her term, and the term of the new office or the period during which the legislator is eligible to assume that office commences prior to the end of the legislator's original term of office, the governor may call a special election to fill the seat of the member in anticipation of a vacancy, upon receipt of a written resignation from that member that is effective on a date not later than the date of the proposed special election.
- **Vacancy before commencement of term.** Whenever the right to office of any person who is elected to the Legislature or the U.S. Senate or House of Representatives ceases before the commencement of the term of office to which he or she is elected, a special election must be held to fill the vacancy.
- **State judicial offices.**
 - Generally, a vacancy in the office of justice of the Wisconsin Supreme Court, court of appeals judge, or circuit court judge occurring in any year after the date of the spring election and on or before December 1 must be filled as follows: (1) if in the office of circuit court judge, at the succeeding spring election; (2) if in the office of court of appeals judge, at the first succeeding spring election when no other court of appeals judge is to be elected from the same court of appeals district; or (3) if in the office of Supreme Court justice, at the first succeeding spring election when no other justice is to be elected. A vacancy in the office of Supreme Court justice, court of appeals judge, or circuit court judge occurring after December 1 and on or before the date of the succeeding spring election must be filled as follows: (1) if in the office of circuit court judge, at the second succeeding spring election; (2) if in the office of court of appeals judge, at the first spring election, beginning with the second succeeding spring election, when no other court of appeals judge is to be elected from the same court of appeals district; or (3) if in the office of Supreme Court justice, at the first spring election, beginning with the second succeeding spring election, when no other justice is to be elected.
 - If a vacancy in the office of Wisconsin Supreme Court justice, court of appeals judge, or circuit court judge occurs after December 1 and on or before the date of the succeeding spring election as a result of the resignation of the incumbent, the vacancy must be filled at the regularly scheduled election if an election for that seat is scheduled to be held at the succeeding spring election and if the incumbent is not a candidate to succeed himself or herself.
 - If a vacancy in the office of Wisconsin Supreme Court justice, court of appeals judge, or circuit court judge occurs after the date of the spring election for that seat and before the succeeding August 1 as a result of the resignation of the

incumbent and the incumbent is not elected to succeed himself or herself, the vacancy must be filled by the individual who was elected at the regularly scheduled election.

- **Municipal judicial office.** A permanent vacancy in the office of municipal judge may be filled by temporary appointment of the municipal governing body, or, in the case of a joint municipal judge, jointly by the governing bodies of all municipalities served by the judge. The office must then be permanently filled by special election, held concurrently with the next spring election following the occurrence of the vacancy. However, a vacancy occurring during the period after December 1 and on or before the date of the spring election must be filled at the second succeeding spring election. The governing body of a city or village or, in the case of a joint municipal judge, the governing bodies of the participating cities or villages, if the vacancy occurs before April 15 in the year preceding expiration of the term of office, may order a special election to be held on the Tuesday after the first Monday in November following the date of the order.
- **Ballot failure.** If through neglect or failure, an elected officer who should have been chosen at the spring or general election is not chosen at that election, a special election may generally be held to fill the vacancy.
- **Other vacancies.** At the direction of the governor, a special election is held to fill any vacancy not provided for above, except judicial offices.

[s. 8.50 (4), Stats.]

REFERENDA

The statutes provide a number of opportunities for referenda to be submitted to the voters for the purpose of advising about, validating, or ratifying various questions of local or statewide concern. The ballot must give a concise statement of each question as set forth in the act or resolution directing the submission of the question in accordance with the ballot form prescribed by the Elections Commission. The question may not be worded so as to require a negative vote to approve a proposition or an affirmative vote to disapprove a proposition. [s. 5.64 (2), Stats.]

Generally, all referenda must appear on a separate ballot, unless the municipality uses a consolidated ballot. More than one referendum question may appear on the same ballot if the questions are numbered and all electors voting on the ballot are entitled to vote upon all questions. Unless a consolidated ballot is used, state and county referenda must appear on a separate ballot from municipal or special district referenda. [s. 5.64 (2), Stats.]

All proposed constitutional amendments and any other measure or question to be submitted to a vote of the people must be filed with the official or agency responsible for preparing the ballots no later than 70 days prior to the election at which the amendment, measure, or question will appear on the ballot. [s. 8.37, Stats.]

INITIATIVE (DIRECT LEGISLATION)

Wisconsin law authorizes citizens to petition certain municipal governments to enact ordinances or resolutions without alteration. Electors in a city or village, equal in number to 15% of the votes cast for governor at the last general election in their city or village, may sign and file a petition with the city or village clerk requesting that an attached proposed ordinance or resolution either be adopted by the city common council or the village board or be referred to a vote of the electors

without alteration. The form of the petition must meet certain statutory requirements and may not be signed 60 or more days before the date the petition is offered for filing. After the petition has been offered for filing, no name may be erased or removed. [s. 9.20 (1) to (2m), Stats.]

Within 15 days after the petition has been filed, the clerk must determine whether the petition is sufficient and whether the proposed ordinance or resolution is in proper form. The clerk must state his or her findings in a certificate attached to the petition. If the petition is found to be insufficient or the proposed ordinance or resolution is not in proper form, the certificate must state the particulars of the insufficiency or improper form. The petition or proposed ordinance or resolution may be amended within 10 days after the original certificate is attached. When the original or amended petition is found to be sufficient and the original or amended ordinance or resolution is in proper form, the clerk must state that fact on the attached certificate and forward it immediately to the common council or village board. [s. 9.20 (3), Stats.]

The common council or village board must, without alteration, either pass the ordinance or resolution within 30 days following the date of the clerk's final certificate, or submit it to the voters at the next spring or general election, if the election is more than 70 days after the date of the council's or board's action on the petition or the expiration of the 30-day period, whichever occurs first. If there are 70 days or fewer before the election, the ordinance or resolution must be voted on at the next election thereafter. The council or board, by a three-fourths vote of the members-elect, may order a special election for the purpose of voting on the ordinance or resolution at any time prior to the next election. However, no more than one special election for an initiative may be ordered in any six-month period. [s. 9.20 (4), Stats.]

The clerk must give notice of the ordinance or resolution. The ordinance or resolution does not need to be printed in its entirety on the ballot, but a concise statement of its nature must be printed together with a question permitting the elector to indicate approval or disapproval of its adoption. If a majority vote in favor of adoption of the ordinance or resolution, the ordinance or resolution takes effect upon publication, which must occur within 10 days after the election. [s. 9.20 (5) to (7), Stats.]

City ordinances or resolutions adopted by direct legislation are not subject to veto by the mayor, and ordinances or resolutions adopted by direct legislation may not be repealed or amended within two years of adoption, except by a vote of the electors. The common council or village board may submit a proposition to repeal or amend the ordinance or resolution at any election. [s. 9.20 (8), Stats.]

RECALL ELECTIONS

The Wisconsin Constitution and statutes combine to authorize voters to petition for the recall of any incumbent elected official. The Wisconsin Constitution, in art. XIII, s. 12, provides for the recall of any congressional, judicial, legislative, or county elected official. The statutes additionally authorize the recall of other local elected officials. To initiate the recall process, voters must file a petition demanding the recall of the officeholder. [s. 9.10 (1) (a), Stats.]

Signatures

Generally, a petition for recall of an elected official must be signed by voters equal in number to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled. Recall petitions must be filed with the same official or agency with whom nomination papers or declarations of candidacy for that office are filed. That official or agency is required to determine and certify to any interested person the

number of signatures required on a recall petition. If no statistics are available to calculate the required number of signatures on a recall petition, the number of signatures is determined according to a formula specified in the statutes. [Wis. Const. art. XIII, s. 12 (1); s. 9.10 (1) (a) to (d), Stats.]

Format

Generally, all recall petitions must satisfy certain statutory requirements (e.g., each recall petition must have the words “RECALL PETITION” at the top in bold print). However, only a recall petition for a city, village, town, town sanitary district, or school district office must contain a statement of a **reason** for the recall that is related to the official responsibilities of the official for whom removal is sought. [s. 9.10 (2) (a) to (c), Stats.]

Before a petitioner can file a recall petition, the petitioner must file a registration statement under state campaign finance law. The petitioner must also include a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought, and, where required, a statement of a reason for the recall. [s. 9.10 (2) (d), Stats.]

Filing

A recall petition must be offered for filing by 5:00 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed and no signature may be counted unless the date of the signature falls within the applicable periods identified above. In addition, no recall petition may be filed prior to the expiration of one year after commencement of the term of office for which the officer is elected. [s. 9.10 (2) (d) and (s), Stats.]

The official against whom the recall petition has been filed may challenge the sufficiency of the petition after the petition is offered for filing. The filing officer or agency is responsible for reviewing a verified challenge to a recall petition if it is made prior to certification of the petition. However, a person challenging the petition bears the burden of proving its insufficiency. A petitioner may file a rebuttal to the challenge. [s. 9.10 (2) (f) and (g), (3) (b), and (4) (a), Stats.]

The statutes identify a number of specific items that may be challenged such as the sufficiency and validity of the signatures, but the statutes do not provide an exhaustive list of potential grounds for a challenge. [s. 9.10 (2) (q), Stats.]

If the official with whom the petition is filed determines that the petition is sufficient, the official must schedule a recall election for the Tuesday of the sixth week following the date of filing the petition, or the day after that if Tuesday is a holiday. If the official finds the petition to be insufficient, the petitioner has five days to remedy the insufficiency. [Wis. Const. art. XIII, s. 12 (2); s. 9.10 (3) (b) and (4) (a) and (d), Stats.]

After the official makes a final determination on the sufficiency or insufficiency of a recall petition for state, congressional, legislative, judicial, and county officers, the petitioner or the officer against whom recall is sought may file a petition for a writ of mandamus or prohibition with the circuit court for the county where the recall petition is offered for filing to determine whether the petition is sufficient. The court must give the matter precedence over other matters not given similar precedence by law. [s. 9.10 (3) (bm), Stats.]

Recall Primary and Election

The official against whom the recall petition is filed is a candidate at the recall election without nomination unless the official resigns within 10 days after the original filing of the petition. Other candidates for the office must file nomination papers not later than 5 p.m. on the fourth Tuesday preceding the election to have their names placed on the ballot at the recall election. All candidates for any village, town, and town sanitary district office, other than the official against whom the recall petition is filed, must file nomination papers, even if the town or village normally uses a caucus process for nomination. [Wis. Const. art. XIII, s. 12 (4); s. 9.10 (3) (c) and (4) (e) and (h), Stats.]

If more than two persons compete for a nonpartisan office, a recall primary must be held. The names of the two persons receiving the highest number of votes in the recall primary are then certified to appear on the ballot in the recall election, but if any person receives a majority of the total number of votes cast in the recall primary, a recall election may not be held. If the incumbent receives a majority of the votes cast, the incumbent is retained in office for the remainder of the term. If another candidate receives a majority of the votes cast, that candidate is elected to serve for the remainder of the unexpired term of the incumbent. For any partisan office, a recall primary must be held for each political party that is entitled to a separate ballot and from which more than one candidate competes for the party's nomination in the recall election. Independent candidates may be shown on the ballot for the recall election only. [Wis. Const. art. XIII, s. 12 (4) (b); s. 9.10 (3) (d) and (e) and (4) (f), Stats.]

If a recall primary is necessary, the primary is held on the Tuesday of the sixth week after the recall petition is filed and the recall election is held on the Tuesday of the fourth week commencing after the recall primary. [s. 9.10 (3) (f) and (4) (g), Stats.]

After one recall petition and recall election, no further recall petition may be filed against the same official during the term for which he or she was elected. [Wis. Const. art. XIII, s. 12 (6); s. 9.10 (6), Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Parker Conover, Legal Intern, and Jessica Karls-Ruplinger, Deputy Director, on July 27, 2018.