



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Administration of Elections: Elections Commission and Local Governments

In Wisconsin, the Elections Commission¹ administers and enforces election laws. Although the Commission is responsible for general oversight and administration of elections in Wisconsin, much of the operations and logistics for elections is performed by county clerks, municipal clerks, and other election officials (commonly referred to as “poll workers”). County clerks perform various duties, including duties relating to ballots, training, and assisting the Commission and municipal clerks. Municipal clerks supervise elections in their municipalities, and they perform duties relating to notices, polling places, ballots, voter records, and supervision of election officials, as well as any other duties that may be necessary to conduct elections.

This Information Memorandum describes the roles of the Elections Commission, county clerks, municipal clerks, and other election officials in administering Wisconsin elections.

ELECTIONS COMMISSION

COMMISSION STRUCTURE

Members

Under Wisconsin law, the Elections Commission has four members appointed by legislative leadership and at least two members appointed by the governor. Specifically, the Commission consists of the following members, who serve for five-year terms: (1) one member appointed by the Senate majority leader; (2) one member appointed by the Senate minority leader; (3) one member appointed by the Assembly speaker; (4) one member appointed by the Assembly minority leader; (5) two members who formerly served as county or municipal clerks and who are nominated by the governor and confirmed by a majority of the Senate²; and (6) one member for each political party, other than the two major political parties, qualifying for a separate ballot

¹ For additional information about the Elections Commission, see Legislative Council Information Memorandum IM-2015-15, *Elections Commission and Ethics Commission* (December 21, 2015).

² The legislative leadership of the two major political parties that received the largest number of votes for president must prepare a list of three individuals such that each major political party has prepared one list. The governor must choose one nominee from each list. [s. 15.61 (1) (a) 5., Stats.]

whose candidate for governor received at least 10% of the vote in the most recent gubernatorial election and who is nominated by the governor and confirmed by a majority of the Senate.³ [s. 15.61 (1) (a), Stats.]

A member of the Elections Commission may not hold another office or position that is a state or local public office (except as a reserve judge); become a candidate for state or local office; or be a lobbyist. [s. 15.61 (2) to (4), Stats.]

Vacancies

Wisconsin law provides that if a vacancy occurs for a member of the Elections Commission appointed by the Senate majority leader, Senate minority leader, Assembly speaker, or Assembly minority leader, the legislator responsible for making the appointment must appoint a new member no later than 45 days after the date of the vacancy. If a vacancy occurs for a member nominated by the governor, a new member must be selected, nominated, and submitted to the Senate for confirmation no later than 45 days after the date of the vacancy. [s. 15.61 (5), Stats.]

Chairperson

Under Wisconsin law, the chairperson of the Elections Commission is chosen by affirmative vote of at least two-thirds of the Commission members at the Commission's first meeting every two years. The chairperson must be chosen from among the Commission members who are appointed by legislative leadership, and the political party affiliation of the chairperson must rotate every two years. [s. 15.06 (2) (b) 1., Stats.]

Administrator

Wisconsin law provides that the Elections Commission is under the direction and supervision of an administrator who serves for a four-year term expiring on July 1 of the odd-numbered year. The administrator is appointed by a majority of the members of the Commission and confirmed by the Senate. Until the Senate confirms an administrator, an interim administrator selected by a majority of the Commission directs and supervises the Commission. If a vacancy occurs in an administrator position, the Commission must appoint a new administrator, and submit the appointment for Senate confirmation, no later than 45 days after the date of the vacancy.⁴ [ss. 5.05 (3d) and 15.61 (1) (b), Stats.]

ADMINISTRATION OF ELECTION LAWS

Under Wisconsin law, the Elections Commission administers and enforces election laws. The Commission is responsible for general oversight and administration of elections in this state, but

³ The governor must choose each nominee from a list of three individuals selected by the chief officer of that political party. [s. 15.61 (1) (a) 6., Stats.]

⁴ If the Elections Commission has not appointed a new administrator at the end of the 45-day period, the Joint Committee on Legislative Organization (JCLO) must appoint an interim administrator to serve until a new administrator has been confirmed by the Senate, but for a term of no longer than one year. If the administrator position remains vacant at the end of the one-year period, the process for filling the vacancy through JCLO is repeated until the vacancy is filled. [s. 15.61 (1) (b) 1., Stats.]

much of the operations and logistics for elections is performed by local government, primarily county and municipal clerks.

As part of its administration role, the Elections Commission provides guidance and training in election laws to clerks, and it may promulgate administrative rules to interpret and implement election laws. Examples of other duties performed by the Commission in its administration role include all of the following:

- **Forms.** Prescribe various forms, including forms relating to voter registration and absentee voting.
- **Administrative rules.** Promulgate rules for the administration of the statutory requirements for voting machines, electronic voting systems, and any other voting apparatus.
- **Registration list.** Maintain the official registration list and require all municipalities to use the list in every election.⁵
- **Filing officer.** Serve as the filing officer for nomination papers and declarations of candidacy for state offices and the offices of U.S. senator and representative.
- **Election manual.** Prepare and publish an election manual that explains the duties of election officials, together with notes and references to the statutes.
- **Voting system audit.** Following each general election, audit the performance of each voting system used in this state to determine the error rate of the system in counting ballots that are validly cast by voters.

[ss. 5.05, 7.08, 8.10 (6) (a), 8.15 (8) (a), and 8.21 (1), Stats.]

ENFORCEMENT OF ELECTION LAWS

Under Wisconsin law, in addition to its role in administering elections, the Elections Commission also has enforcement authority, which includes investigating violations of election laws and prosecuting alleged civil violations of those laws. The Commission refers matters of criminal prosecution to a district attorney, the Attorney General, or a special prosecutor.

In its enforcement role, the Elections Commission may take various actions. For example, the Commission may do any of the following:

- **Subpoena.** Subpoena persons and records relevant to an investigation, after providing notice to any party who is the subject of the investigation.
- **Civil actions.** Bring civil actions to require forfeitures for any violation of election laws and, in certain cases, compromise and settle actions.

⁵ For additional information about the official registration list, see Legislative Council Information Memorandum IM-2018-09, *Voter Registration* (July 27, 2018).

- **Injunctive relief.** Sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief as may be appropriate to enforce any election law or to ensure its proper administration.
- **Compliance review.** Upon complaint or on its own motion, investigate an election official who is alleged to have acted or failed to act in conformity with certain election laws. The Commission may summarily decide the matter before it and, by order, require an election official to conform his or her conduct to the law, restrain an official from taking any action inconsistent with the law, or require an official to correct any action or decision inconsistent with the law.

[ss. 5.05 and 5.06, Stats.]

COUNTY CLERKS

Under Wisconsin law, county clerks perform various duties in the administration of elections, many of which relate to ballot preparation and distribution, provision of election supplies, training election officials, and informing voters. Specifically, the duties of county clerks include all of the following:

- **Ballot preparation.** Provide ballots for every election in the county and for all national, state, and county offices and for state and county referenda. A county clerk is required to prepare the official ballots immediately upon receipt of the certified list of candidate names from the Elections Commission.
- **Ballot distribution.** Distribute the ballots to the municipal clerks no later than 48 days before each partisan primary and general election and no later than 22 days before each other primary and election.
- **Election supplies.** Provide sufficient election supplies for national, state, and county elections to municipalities within the county.
- **Election official training.** Assist the Elections Commission in training election officials.
- **Voter information.** Assist the Elections Commission in conducting educational programs to inform voters about the voting process; and assist the Commission and municipal clerks in maintaining toll-free telephone lines and other systems for voters to report possible voting fraud and voting rights violations, to obtain general election information, and to access information concerning their registration status, current polling place locations, and other information relevant to voting in elections.

[s. 7.10, Stats.]

MUNICIPAL CLERKS

Under Wisconsin law, a municipal clerk (a city, village, or town clerk) has charge and supervision of elections and voter registration in a municipality. Municipal clerks must perform all of the following duties and any other duties that may be necessary to properly conduct elections or registration:

- **Petitions and nomination papers.** Review, examine, and certify the sufficiency and validity of petitions and nomination papers.
- **Notices and publications.** Prepare notices and publications relating to the conduct of elections or voter registration.
- **Polling places.** Equip polling places.
- **Election equipment.** Purchase and maintain election equipment.
- **Ballot preparation and distribution.** Prepare ballots for municipal elections; distribute ballots; record the condition of ballot packages; and provide other supplies for conducting all elections. A municipal clerk must deliver ballots to the polls before the polls open and provide sample ballots and, if necessary, substitute ballots.
- **Absentee ballots.** Prepare official absentee ballots for delivery to voters requesting them; send an official absentee ballot, within a specified time period, to each voter who has requested one; send an absentee ballot automatically to each voter making an authorized request for automatic distribution; and operate an alternative absentee ballot site, if the municipality establishes a site.⁶
- **Ballot boxes and other material.** Direct how and when to destroy the contents of blank ballot boxes and unused election materials.
- **Reassignment of election officials.** Reassign election officials to another polling place within the municipality whenever necessary to assure adequate staffing at all polling places.
- **Voting accommodations.** Make reasonable efforts to comply with requests for voting accommodations made by voters with disabilities, whenever feasible.
- **Provisional ballots.** As soon as possible after the close of the polling places on Election Day, post at the clerk's office, and on the Internet, a statement of the number of voters who cast provisional ballots at the election.
- **Voter records.** Generally within 30 days after each election, enter on the registration list, under the name of each voter who voted at the election, an indication of the date of that election.
- **Training.** Attend a training program sponsored by the Elections Commission at least once every two years; and train election officials in their duties.
- **Voter information.** Assist the Elections Commission in conducting educational programs to inform voters about the voting process; and assist the Commission in maintaining toll-free telephone lines and other systems for voter information, as described above.

⁶ For additional information on absentee ballots, see Legislative Council Information Memorandum IM-2018-10, *Voting at a Polling Place or by Absentee Ballot* (July 27, 2018).

- **Improper conduct.** Discharge election officials for improper conduct or willful neglect of duties.
- **Election fraud.** Report suspected election fraud, irregularities, or violations to a district attorney.
- **Municipal elections.** In municipal elections, perform the duties prescribed for county clerks, as described above.

[s. 7.15, Stats.]

BOARDS OF ELECTION COMMISSIONERS

Wisconsin law provides that in Milwaukee County and the City of Milwaukee, elections are administered by boards of election commissioners, rather than the county clerk and municipal clerk. In Milwaukee County and the City of Milwaukee, all powers and duties assigned to municipal or county clerks in state election laws are generally carried out by the boards of election commissioners or their executive directors. [ss. 7.20 (1) and 7.21 (1), Stats.]

Each board of election commissioners consists of three members. Members are chosen from lists of names selected and approved by the two political parties receiving the most votes for governor in the county (for the county board of election commissioners) or city (for the city board of election commissioners) in the last general election. The county executive (for the county board of election commissioners) or the mayor (for the city board of election commissioners) selects two members from the majority party and one member from the next highest party in the county or city. Election commissioners must be qualified voters and residents of the state and county and, for the city board of election commissioners, of the city. Election commissioners may not hold any other public office, except the office of notary public, during their four-year term. [s. 7.20, Stats.]

ELECTION OFFICIALS

NUMBER AND QUALIFICATIONS

Under Wisconsin law, each polling place must have seven election officials, except that, if voting machines are used, a municipal governing body may reduce this number to five. A governing body may provide, by ordinance, for the selection of alternate officials or the selection of two or more sets of officials to work at different times on Election Day and may permit the municipal clerk to establish different working hours for different officials assigned to the same polling place. Additional officials must be appointed in such a manner that the total number of officials is an odd number. [s. 7.30 (1), Stats.]

An election official must be a qualified voter⁷ of a county in which the municipality where the official serves is located, except that a chief election official generally must be a qualified voter of the municipality in which the chief official serves. An election official must be able to read and write the English language, have general knowledge of election laws, and may not be a candidate for any office on the ballot at an election at which the official serves. [s. 7.30 (2), Stats.]

In addition, except when insufficient names have been nominated, all election officials must be affiliated with one of the two recognized political parties that received the largest number of votes in the prior presidential or gubernatorial election in the ward or combination of wards served by the polling place. The party that received the largest number of votes is entitled to one more official at each polling place than the party receiving the next largest number of votes. When two or more officials are required to perform a function within a polling place and both parties have submitted nominees, the chief official must assign, insofar as practicable, an equal number of officials from the nominees of each party. [s. 7.30 (2) (a) and (4) (c), Stats.]

APPOINTMENT PROCESS

Wisconsin law requires a city mayor, village president, or town board chairperson to nominate, to the municipal governing body, the necessary election officials. Appointments are made by the municipal governing body or, in the City of Milwaukee, by the board of election commissioners. [s. 7.30 (4), Stats.]

The two recognized political parties receiving the largest number of votes in the prior presidential or gubernatorial election in the ward or combination of wards served by the polling place each submit a list of names from which the election officials must be chosen. Each person submitting nominees must certify on the list that the person has contacted each nominee whose name appears on the list and that each nominee has agreed to serve as an election official. The statutes specify the procedure used by a municipality or, in the City of Milwaukee, by the board of election commissioners in appointing names from the political party lists. If there is an insufficient number of nominees on the lists, the appointments of election officials may be made without regard to party affiliation. [s. 7.30 (4), Stats.]

Election officials hold office for two years and until their successors are appointed and qualified. If an official lacks required qualifications, fails to attend training sessions, is guilty of neglecting his or her official duties, or commits official misconduct, the municipal clerk or, in the City of Milwaukee, the board of election commissioners is required to summarily remove the official from office and fill the vacancy. [s. 7.30 (6), Stats.]

DUTIES

Under Wisconsin law, a chief election official directs the conduct of activities assigned to election officials at the polling place, subject to the supervision of the municipal clerk. Election officials

⁷ A pupil who is 16 or 17 years of age and is enrolled in grades 9 to 12 may serve as an election official at the polling place serving the pupil's residence, with the approval of the pupil's parent or guardian. To serve, a pupil must have at least a 3.0 grade point average or meet criteria established by the school board or governing body. [s. 7.30 (2) (am), Stats.]

are responsible for various duties at the polling place, including all of the following: (1) preserving order during the election; (2) handling and endorsing ballots; (3) adjourning to another polling location if it is impossible or inconvenient to hold an election at the designated location; (4) handling poll lists; (5) resolving challenges to voters; and (6) serving as the board of canvassers at their polling place. [ss. 7.36 and 7.37, Stats.]

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

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