CHAPTER 5

ELECTIONS — GENERAL PROVISIONS; BALLOTS AND VOTING SYSTEMS

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NOTE: 2005 Wis. Act 451, which made major revisions to the election laws, including to Chapter 5, contains an extensive prefatory note explaining the changes.

SUBCHAPTER I

GENERAL PROVISIONS

5.01 Scope. (1) CONSTRUCTION OF CHS. 5 TO 12. Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.

(2) GENERAL PROVISIONS OF ELECTION LAWS APPLY. The general provisions of chs. 5 to 12 apply to all elections.

(3) PLURALITY SHALL ELECT. (a) Except as provided in par. (b), in every election to choose any officer, each elector has one vote for each office unless clearly indicated otherwise. The person receiving the greatest number of legal votes for the office shall be declared elected, and the canvassers shall so determine and certify.

(b) In an election to fill a nonpartisan state office, if no names are certified to appear on the ballot, no person may be declared elected.

(4) TIE VOTE. (a) If 2 or more candidates for the same office receive the greatest, but an equal number of votes, the winner shall be chosen by lot in the presence of the board of canvassers charged with the responsibility to determine the election, or in the case of an election for state or national office or metropolitan sewerage commissioner, if the commissioner is elected under s. 200.09 (11) (am), in the presence of the chairperson of the elections commission or the chairperson's designee.

(b) If, in a primary, 2 or more candidates receive an equal but not the greatest number of votes so that only one of those candidates with equal votes may advance to the final election, the choice shall similarly be made by drawing lots.

(c) The candidates may, if all those tied for the same office are present, draw for themselves. Upon refusal or absence of any of the candidates, the board of canvassers shall appoint a competent person to draw, and upon the results declare and certify the winner.

(d) If a question is submitted to the electors and an equal number of votes are cast for and against adoption, the question fails adoption.

(5) ELECTION OF GOVERNOR AND LIEUTENANT GOVERNOR. (a) In every general election to choose the governor and the lieutenant governor, each elector shall have a single vote applicable to both offices. The persons receiving the greatest number of legal votes cast jointly for them for governor and lieutenant governor shall be declared elected, and the canvassers shall so determine and certify.

(b) In case 2 or more slates have an equal and the highest number of votes for governor and lieutenant governor, the 2 houses of the legislature shall at the next annual session choose by joint ballot one of the slates so having an equal and the highest number of votes for governor and lieutenant governor.

History: 1979 c. 89; 1983 a. 484; 1985 a. 304; 1997 a. 27; 1999 a. 150 s. 672; 1999 a. 182; 2015 a. 118.

The supreme court has consistently construed election statutes as being directory, in keeping with sub. (1) directive that election laws shall be construed to give effect to the will of the electors. Lanser v. Koconis, 62 Wis. 2d 86, 214 N.W.2d 425 (1974).

When 40 percent of registered voters were denied ballots in an election to remove a county seat, the election was set aside even though the outcome probably was not affected. McNally v. Tollander, 100 Wis. 2d 490, 302 N.W.2d 440 (1981).

Sub. (1) applies only after an election has been held and the will of the people manifested. City of Chippewa Falls v. Town Of Hallie, 231 Wis. 2d 85, 604 N.W.2d 300 (Ct. App. 1999), 99−0832.

Only substantial violations of the election law should operate to vacate an election. Carlson v. Oconto County Board of Canvassers, 2001 WI App 20, 240 Wis. 2d 438, 623 N.W.2d 195, 00−1788.

5.02 Definitions. In chs. 5 to 12, unless the context requires otherwise:

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

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

(1q) "Block" means an area which is the smallest geographic area used by the U.S. bureau of the census for data collection and tabulation.

(2) "County clerk" includes the executive director of the county board of election commissioners and their authorized representatives.

(3) "Educational officer" means the state superintendent and school board members.

(3m) "Elected official" means an individual who is elected to a national, state or local office.

(4) "Election" means every public primary and election.

(4c) "Election district" means a municipality that is not divided into wards, except as otherwise provided in s. 8.17 (1) (b).

(4e) "Election official" means an individual who is charged with any duties relating to the conduct of an election.

(4g) "Election registration official" means an election official assigned under s. 6.28 (1) (a) or 7.30 to register electors.

(4m) "Electronic voting system" means a system in which votes are recorded on ballots, and the votes are subsequently counted and tabulated by automatic tabulating equipment. The term also includes a voting machine on which votes are recorded and tabulated by electronic means.

(4s) "Federal election" means any election at which a national office appears on the ballot.

(5) "General election" means the election held in even−numbered years on the Tuesday after the first Monday in November to elect United States senators, representatives in congress, presidential electors, state senators, representatives to the assembly, district attorneys, state officers other than the state superintendent and judicial officers, and county officers other than supervisors and county executives.

(6) "Governing body" means the common council of a city, board of supervisors of a town or board of trustees of a village.

(6m) "Identification" means any of the following documents issued to an individual:

(a) One of the following documents that is unexpired or if expired has expired after the date of the most recent general election:

1. An operator's license issued under ch. 343.
2. An identification card issued under s. 343.50.
3. An identification card issued by a U.S. uniformed service.
4. A U.S. passport.

(b) A certificate of U.S. naturalization that was issued not earlier than 2 years before the date of an election at which it is presented.

(c) An unexpired driving receipt under s. 343.11.

(d) An unexpired identification card receipt issued under s. 343.50.

(e) An identification card issued by a federally recognized Indian tribe in this state.

(f) An unexpired identification card issued by a university or college in this state that is accredited, as defined in s. 39.30 (1) (d), that contains the date of issuance and signature of the individual to whom it is issued and that contains an expiration date indicating that the card expires no later than 2 years after the date of issuance if the individual establishes that he or she is enrolled as a student at the university or college on the date that the card is presented.

NOTE: In One Wisconsin Now et al. v. Thomsen et al, 15−cv−324, the United States District Court, Western District of Wisconsin ordered that "the prohibition on using expired, but otherwise qualifying, student IDs is unconstitutional." Appeal pending 9−20−16.

(g) An unexpired veterans identification card issued by the veterans health administration of the federal department of veterans affairs.

(7) "Judge" means a court of appeals judge or a judge of a circuit court.

(8) "Justice" means a justice of the supreme court.

(8m) "Labor organization" means any employee organization in which employees participate and which exists primarily for the purpose of engaging in collective bargaining with any employer concerning grievances, labor disputes, wages, hours or conditions of employment, or the promotion and advancement of the professional or occupational standards and the welfare of its members and families and any organization established for the same purposes composed of individuals or affiliates of any such employee organization.

(9) "Local office" means any elective office other than a state or national office.

(10) "Municipal clerk" means the city clerk, town clerk, village clerk and the executive director of the city election commission and their authorized representatives. Where applicable, "municipal clerk" also includes the clerk of a school district.

(11) "Municipality" means city, town or village.

(12) "National office" means the offices of president and vice president of the United States, U.S. senator and representative in congress.

(12m) "Nickname" means a familiar or shortened form of a proper name by which an individual is commonly known.

(12s) "Partisan primary" means the primary held the 2nd Tuesday in August to nominate candidates to be voted for at the general election.

(13) "Political party" has the meaning given in s. 11.0101 (26).

(14) "Poll list" means the list which is compiled by election officials on election day showing the names and addresses of electors who actually cast votes in an election.

(15) "Polling place" means the actual location wherein the elector's vote is cast.

(16) "Primary" means a primary election.

(16c) "Proof of identification" means identification that contains the name of the individual to whom the document was issued, which name conforms to the individual's voter registration form, if the individual is required to register to vote, and that contains a photograph of the individual, except as authorized in s. 343.14 (3m) or 343.50 (4g).

(16g) "Qualified circulator" means a qualified elector of this state or any U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under s. 6.03.

(16m) "Recognized political party" means a political party which qualifies for a separate ballot or column under s. 5.62 (1) (b) or (2).

(16s) "Referendum" means an election at which an advisory, validating or ratifying question is submitted to the electorate.

(17) "Registration list" means the list of electors who are properly registered to vote.

(19) "Special election" means any election, other than those described in subs. (5), (12s), (21), and (22), to fill vacancies or to conduct a referendum.

(20) "Special primary" means the primary held 4 weeks before the special election except when the special election is held on the same day as the general election the special primary shall be held on the same day as the general primary or if the special

election is held concurrently with the spring election, the primary shall be held concurrently with the spring primary.

(20g) "Special purpose district" means any local governmental unit other than a county or municipality.

(20r) "Special referendum" means any referendum held at a special election which is not held concurrently with the elections described in sub. (5), (12s), (21), or (22).

(21) "Spring election" means the election held on the first Tuesday in April to elect judicial, educational and municipal officers, nonpartisan county officers and sewerage commissioners and to express preferences for the person to be the presidential candidate for each party in a year in which electors for president and vice president are to be elected.

(22) "Spring primary" means the nonpartisan primary held on the 3rd Tuesday in February to nominate nonpartisan candidates to be voted for at the spring election.

(23) "State office" means the offices of governor, lieutenant governor, secretary of state, state treasurer, attorney general, state superintendent, justice of the supreme court, court of appeals judge, circuit court judge, state senator, state representative to the assembly and district attorney.

(24) "State superintendent" means the state superintendent of public instruction.

(24g) "Voting device" means an apparatus other than a voting machine which the elector uses to record his or her votes on a ballot.

(24r) "Voting machine" means a machine which serves in lieu of a voting booth and which mechanically or electronically records the votes cast by electors, who depress levers or buttons located next to the choices listed on a ballot to cast their votes.

(24w) "Voting system" means:

(a) The total combination of mechanical, electromechanical, or electronic equipment, including the software, hardware, and documentation required to program, control, and support the equipment, that is used to define ballots, to cast and count votes, to report or display election results, and to maintain and produce any audit trail information.

(b) The practices and associated documentation for any of the following purposes:

1. To identify equipment components and versions of such components.

2. To test the equipment during its development and maintenance.

3. To maintain records of equipment errors and defects.

4. To determine specific equipment changes to be made after the initial qualification of the equipment.

5. To make available any materials to an elector.

(25) "Ward" means a town, village or city subdivision created for the convenience of the electors therein and to facilitate the division of such municipalities into election districts of substantially equal population numbers along common boundaries observing the community of interest of existing neighborhoods and other settlements.

History: 1971 c. 211; 1971 c. 304 ss. 2, 29 (2); 1973 c. 280, 334; 1975 c. 93; 1977 c. 107, 187, 394; 1977 c. 427 ss. 3 to 14; 1977 c. 449; 1979 c. 32, 89, 221; 1979 c. 260 ss. 1m, 73 to 75; 1979 c. 311, 328; 1981 c. 4, 391; 1983 a. 484 ss. 5, 5c, 124m, 128; 1985 a. 303; 1985 a. 304 ss. 1m, 2, 155; 1987 a. 391 ss. 1 to 1r, 66w; 1989 a. 31; 1991 a. 5; 1993 a. 140, 184; 1995 a. 16 s. 2; 1995 a. 27 s. 9145 (1); 1995 a. 219; 1997 a. 35; 2001 a. 16, 109; 2003 a. 24, 265; 2005 a. 177, 451; 2007 a. 1; 2009 a. 397; 2011 a. 23, 32, 45, 75; 2013 a. 165; 2015 a. 117, 118, 261.

5.025 Elections commission; definition. In chs. 5 to 10 and 12, "commission" means the elections commission.

History: 2015 a. 118 s. 2; 2015 Stats. s. 5.025.

5.05 Elections commission; powers and duties. (1) GENERAL AUTHORITY. The elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Pursuant to such responsibility, the commission may:

(b) In the discharge of its duties and after providing notice to any party who is the subject of an investigation, subpoena and bring before it any person and require the production of any papers, books, or other records relevant to an investigation. Notwithstanding s. 885.01 (4), the issuance of a subpoena requires action by the commission at a meeting of the commission. In the discharge of its duties, the commission may cause the deposition of witnesses to be taken in the manner prescribed for taking depositions in civil actions in circuit court.

(c) Bring civil actions to require a forfeiture for any violation of chs. 5 to 10 or 12. The commission may compromise and settle any civil action or potential action brought or authorized to be brought by it which, in the opinion of the commission, constitutes a minor violation, a violation caused by excusable neglect, or which for other good cause shown, should not in the public interest be prosecuted under such chapter. Notwithstanding s. 778.06, a civil action or proposed civil action authorized under this paragraph may be settled for such sum as may be agreed between the parties. Any settlement made by the commission shall be in such amount as to deprive the alleged violator of any benefit of his or her wrongdoing and may contain a penal component to serve as a deterrent to future violations. In settling civil actions or proposed civil actions, the commission shall treat comparable situations in a comparable manner and shall assure that any settlement bears a reasonable relationship to the severity of the offense or alleged offense. Except as otherwise provided in sub. (2m) (c) 15. and 16. and ss. 5.08 and 5.081, forfeiture actions brought by the commission shall be brought in the circuit court for the county where the defendant resides, or if the defendant is a nonresident of this state, in circuit court for the county wherein the violation is alleged to occur. For purposes of this paragraph, a person other than an individual resides within a county if the person's principal place of operation is located within that county. Whenever the commission enters into a settlement agreement with an individual who is accused of a civil violation of chs. 5 to 10 or 12 or who is investigated by the commission for a possible civil violation of one of those provisions, the commission shall reduce the agreement to writing, together with a statement of the commission's findings and reasons for entering into the agreement and shall retain the agreement and statement in its office for inspection.

(d) Sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief as may be appropriate to enforce any law regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensure its proper administration. No bond is required in such actions. Actions shall be brought in circuit court for the county where a violation occurs or may occur.

(e) Issue an order under s. 5.06, exempt a polling place from accessibility requirements under s. 5.25 (4) (a), exempt a municipality from the requirement to use voting machines or an electronic voting system under s. 5.40 (5m), approve an electronic data recording system for maintaining poll lists under s. 6.79, or authorize nonappointment of an individual who is nominated to serve as an election official under s. 7.30 (4) (e).

(f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.

(1e) ACTIONS BY THE BOARD [COMMISSION]. Any action by the commission, except an action relating to procedure of the commission, requires the affirmative vote of at least two−thirds of the members.

NOTE: The correct word is shown in brackets. Corrective legislation is pending.

(2m) ENFORCEMENT. (a) The commission shall investigate violations of laws administered by the commission and may prosecute alleged civil violations of those laws, directly or through its

agents under this subsection, pursuant to all statutes granting or assigning that authority or responsibility to the commission. Prosecution of alleged criminal violations investigated by the commission may be brought only as provided in par. (c) 11., 14., 15., and 16. and s. 978.05 (1). For purposes of this subsection, the commission may only initiate an investigation of an alleged violation of chs. 5 to 10 and 12, other than an offense described under par. (c) 12., based on a sworn complaint filed with the commission, as provided under par. (c). Neither the commission nor any member or employee of the commission, including the commission administrator, may file a sworn complaint for purposes of this subsection.

(c) 2. a. Any person may file a complaint with the commission alleging a violation of chs. 5 to 10 or 12. No later than 5 days after receiving a complaint, the commission shall notify each person who or which the complaint alleges committed such a violation. Before voting on whether to take any action regarding the complaint, other than to dismiss, the commission shall give each person receiving a notice under this subd. 2. a. an opportunity to demonstrate to the commission, in writing and within 15 days after receiving the notice, that the commission should take no action against the person on the basis of the complaint. The commission may not conduct any investigation or take any other action under this subsection solely on the basis of a complaint by an unidentified complainant.

am. If the commission finds, by a preponderance of the evidence, that a complaint is frivolous, the commission may order the complainant to forfeit not more than the greater of $500 or the expenses incurred by the commission in investigating the complaint.

4. If the commission reviews a complaint and fails to find that there is a reasonable suspicion that a violation under subd. 2. has occurred or is occurring, the commission shall dismiss the complaint. If the commission believes that there is reasonable suspicion that a violation under subd. 2. has occurred or is occurring, the commission may by resolution authorize the commencement of an investigation. The resolution shall specifically set forth any matter that is authorized to be investigated. To assist in the investigation, the commission may elect to retain a special investigator. If the commission elects to retain a special investigator, the administrator of the commission shall submit to the commission the names of 3 qualified individuals to serve as a special investigator. The commission may retain one or more of the individuals. If the commission retains a special investigator to investigate a complaint against a person who is a resident of this state, the commission shall provide to the district attorney for the county in which the person resides a copy of the complaint and shall notify the district attorney that it has retained a special investigator to investigate the complaint. For purposes of this subdivision, a person other than an individual resides within a county if the person's principal place of operation is located within that county. The commission shall enter into a written contract with any individual who is retained as a special investigator setting forth the terms of the engagement. A special investigator who is retained by the commission may request the commission to issue a subpoena to a specific person or to authorize the special investigator to request the circuit court of the county in which the specific person resides to issue a search warrant. The commission may grant the request by approving a motion to that effect at a meeting of the commission if the commission finds that such action is legally appropriate.

5. Each special investigator who is retained by the commission shall make periodic reports to the commission, as directed by the commission, but in no case may the interval for reporting exceed 30 days. If the commission authorizes the commission administrator to investigate any matter without retaining a special investigator, the administrator shall make periodic reports to the commission, as directed by the commission, but in no case may the reporting interval exceed 30 days. During the pendency of any investigation, the commission shall meet for the purpose of reviewing the progress of the investigation at least once every 90 days. The special investigator or the administrator shall report in person to the commission at that meeting concerning the progress of the investigation. If, after receiving a report, the commission does not vote to continue an investigation for an additional period not exceeding 90 days, the investigation is terminated at the end of the reporting interval. The commission shall not expend more than $25,000 to finance the cost of an investigation before receiving a report on the progress of the investigation and a recommendation to commit additional resources. The commission may vote to terminate an investigation at any time. If an investigation is terminated, any complaint from which the investigation arose is deemed to be dismissed by the commission. Unless an investigation is terminated by the commission, at the conclusion of each investigation, the administrator shall present to the commission one of the following:

a. A recommendation to make a finding that probable cause exists to believe that one or more violations under subd. 2. have occurred or are occurring, together with a recommended course of action.

b. A recommendation for further investigation of the matter together with facts supporting that course of action.

c. A recommendation to terminate the investigation due to lack of sufficient evidence to indicate that a violation under subd. 2 has occurred or is occurring.

6. a. If the commission finds that there is probable cause to believe that a violation under subd. 2. has occurred or is occurring, the commission may authorize the commission administrator to file a civil complaint against the alleged violator. In such case, the administrator may request the assistance of special counsel to prosecute any action brought by the commission. If the administrator requests the assistance of special counsel with respect to any matter, the administrator shall submit to the commission the names of 3 qualified individuals to serve as special counsel. The commission may retain one of the individuals to act as special counsel. The staff of the commission shall provide assistance to the special counsel as may be required by the counsel to carry out his or her responsibilities.

b. The commission shall enter into a written contract with any individual who is retained as special counsel setting forth the terms of the engagement. The contract shall set forth the compensation to be paid such counsel by the state. The contract shall be executed on behalf of the state by the commission and the commission shall file the contract in the office of the secretary of state. The compensation shall be charged to the appropriation under s. 20.510 (1) (br).

7. No individual who is appointed or retained by the board [commission] to serve as special counsel or as a special investigator is subject to approval under s. 20.930.

NOTE: The correct word is shown in brackets. Corrective legislation is pending.

9. At the conclusion of its investigation, the commission shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation under subd. 2. has occurred or is occurring. If the commission determines that no probable cause exists, it shall dismiss the complaint. Whenever the commission dismisses a complaint or a complaint is deemed to be dismissed under subd. 5., the commission shall immediately send written notice of the dismissal to the accused and to the party who made the complaint.

10. The commission shall inform the accused or his or her counsel of exculpatory evidence in its possession.

11. If the commission finds that there is probable cause to believe that a violation under subd. 2. has occurred or is occurring, the commission may, in lieu of civil prosecution of any matter by the commission, refer the matter to the district attorney for the county in which the alleged violator resides, or if the alleged viola-

tor is a nonresident, to the district attorney for the county where the matter arises, or if par. (i) applies, to the attorney general or a special prosecutor. For purposes of this subdivision, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

12. The commission shall, by rule, prescribe categories of civil offenses which the commission will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The commission may authorize the commission administrator to compromise and settle such alleged offenses in the name of the commission if the alleged offenses by an offender, in the aggregate, do not involve payment of more than $2,500.

13. If a special investigator or the commission administrator, in the course of an investigation authorized by the commission, discovers evidence that a violation under subd. 2. that was not within the scope of the authorized investigation has occurred or is occurring, the special investigator or the administrator may present that evidence to the commission. If the commission finds that there is a reasonable suspicion that a violation under subd. 2. that is not within the scope of the authorized investigation has occurred or is occurring, the commission may authorize the special investigator or the administrator to investigate the alleged violation or may elect to authorize a separate investigation of the alleged violation as provided in subd. 4.

14. If a special investigator or the commission administrator, in the course of an investigation authorized by the commission, discovers evidence of a potential violation of a law that is not administered by the commission arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, the special investigator or the administrator may present that evidence to the commission. The commission may thereupon refer the matter to the appropriate district attorney specified in subd. 11. or may refer the matter to the attorney general. The attorney general may then commence a civil or criminal prosecution relating to the matter.

15. Except as provided in subd. 17., if the commission refers a matter to the district attorney specified in subd. 11. for prosecution of a potential violation under subd. 2. or 14. and the district attorney informs the commission that he or she declines to prosecute any alleged civil or criminal violation related to any matter referred to the district attorney by the commission, or the district attorney fails to commence a prosecution of any civil or criminal violation related to any matter referred to the district attorney by the commission within 60 days of the date of the commission's referral, the commission may refer the matter to the district attorney for another prosecutorial unit that is contiguous to the prosecutorial unit of the district attorney to whom the matter was originally referred. If there is more than one such prosecutorial unit, the chairperson of the commission shall determine the district attorney to whom the matter shall be referred by publicly drawing lots at a meeting of the commission. The district attorney may then commence a civil or criminal prosecution relating to the matter.

16. Except as provided in subd. 17., if the commission refers a matter to a district attorney under subd. 15. for prosecution of a potential violation under subd. 2. or 14. and the district attorney informs the commission that he or she declines to prosecute any alleged civil or criminal violation related to any matter referred to the district attorney by the commission, or the district attorney fails to commence a prosecution of any civil or criminal violation related to any matter referred to the district attorney by the commission within 60 days of the date of the commission's referral, the commission may refer the matter to the attorney general. The attorney general may then commence a civil or criminal prosecution relating to the matter.

17. The commission is not authorized to act under subd. 15. or 16. if a special prosecutor is appointed under s. 978.045 in lieu of the district attorney specified in subd. 11.

18. Whenever the commission refers a matter to special counsel or to a district attorney or to the attorney general under this subsection, the special counsel, district attorney, or attorney general shall report to the commission concerning any action taken regarding the matter. The report shall be transmitted no later than 40 days after the date of the referral. If the matter is not disposed of during that period, the special counsel, district attorney, or attorney general shall file a subsequent report at the end of each 30−day period following the filing of the initial report until final disposition of the matter.

(d) 1. No individual who serves as the commission administrator may have been a lobbyist, as defined in s. 13.62 (11). No such individual may have served in a partisan state or local office.

2. No employee of the commission, while so employed, may become a candidate, as defined in s. 11.0101 (1), for a state or partisan local office. No individual who is retained by the commission to serve as a special investigator or as special counsel may, while so retained, become a candidate, as defined in s. 11.0101 (1), for any state or local office. A filing officer shall decline to accept nomination papers or a declaration of candidacy from any individual who does not qualify to become a candidate under this paragraph.

(e) No individual who serves as an employee of the commission and no individual who is retained by the commission to serve as a special investigator or a special counsel may, while so employed or retained, make a contribution to a candidate for state or local office. No individual who serves as an employee of the commission and no individual who is retained by the commission to serve as a special investigator or as special counsel, for 12 months prior to becoming so employed or retained, may have made a contribution to a candidate for a partisan state or local office. In this paragraph, contribution has the meaning given in s. 11.0101 (8).

(f) Pursuant to any investigation authorized under par. (c), the commission has the power:

1. To require any person to submit in writing such reports and answers to questions relevant to the proceedings as the commission may prescribe, such submission to be made within such period and under oath or otherwise as the commission may determine.

2. To order testimony to be taken by deposition before any individual who is designated by the commission and has the power to administer oaths, and, in such instances, to compel testimony and the production of evidence in the same manner as authorized by sub. (1) (b).

4. To pay witnesses the same fees and mileage as are paid in like circumstances by the courts of this state.

5. To request and obtain from the department of revenue copies of state income or franchise tax returns and access to other appropriate information under s. 71.78 (4) regarding all persons who are the subject of such investigation.

(h) If the defendant in an action for a civil violation of chs. 5 to 10 or 12 is a district attorney or a circuit judge or a candidate for either such office, the action shall be brought by the commission. If the defendant in an action for a civil violation of chs. 5 to 10 or 12 is the attorney general or a candidate for that office, the commission may appoint special counsel to bring suit on behalf of the state.

(i) If the defendant in an action for a criminal violation of chs. 5 to 10 or 12 is a district attorney or a circuit judge or a candidate for either such office, the action shall be brought by the attorney general. If the defendant in an action for a criminal violation of chs. 5 to 10 or 12 is the attorney general or a candidate for that office, the commission may appoint a special prosecutor to conduct the prosecution on behalf of the state.

(j) Any special counsel or prosecutor who is appointed under par. (h) or (i) shall be independent of the attorney general and need not be a state employee at the time of his or her appointment.

(k) The commission's power to initiate civil actions under this subsection for the enforcement of chs. 5 to 10 or 12 shall be the exclusive remedy for alleged civil violations of chs. 5 to 10 or 12.

(2q) SUPPLEMENTAL FUNDING FOR ONGOING INVESTIGATIONS. The commission may request supplemental funds to be credited to the appropriation account under s. 20.510 (1) (be) for the purpose of continuing an ongoing investigation initiated under sub. (2m). A request under this subsection shall be filed with the secretary of administration and the cochairpersons of the joint committee on finance in writing and shall contain a statement of the action requested, the purposes therefor, the statutory provision authorizing or directing the performance of the action, and information about the nature of the investigation for which the commission seeks supplemental funds, excluding the name of any individual or organization that is the subject of the investigation. If the cochairpersons of the joint committee on finance do not notify the secretary of administration that the committee has scheduled a meeting for the purpose of reviewing the request within 14 working days after the commission filed the request, the secretary shall supplement the appropriation under s. 20.510 (1) (be) from the appropriation under s. 20.505 (1) (d) in an amount not to exceed the amount the commission requested. If, within 14 working days after the commission filed the request, the cochairpersons of the joint committee on finance notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the commission's request under this subsection, the secretary may supplement the appropriation under s. 20.510 (1) (be) only with the committee's approval. The committee and the secretary shall notify the commission of all their actions taken under this subsection.

(2w) ELECTIONS COMMISSION. The elections commission has the responsibility for the administration of chs. 5 to 10 and 12.

(3d) ADMINISTRATOR. The commission shall appoint an administrator in the manner provided under s. 15.61 (1) (b). The administrator shall be outside the classified service. The administrator shall appoint such other personnel as he or she requires to carry out the duties of the commission and may designate a commission employee to serve as the commission's legal counsel. The administrator shall perform such duties as the commission assigns to him or her in the administration of chs. 5 to 10 and 12.

(3g) CHIEF ELECTION OFFICER. The commission administrator shall serve as the chief election officer of this state.

(4) EMPLOYEES. All employees of the commission shall be nonpartisan.

(5e) ANNUAL REPORT. The commission shall submit an annual report under s. 15.04 (1) (d) and shall include in its annual report the names and duties of all individuals employed by the commission and a summary of its determinations and advisory opinions issued under sub. (6a). Except as authorized or required under sub. (5s) (f), the commission shall make sufficient alterations in the summaries to prevent disclosing the identities of individuals or organizations involved in the decisions or opinions. [11.1304 (14)] The commission shall identify in its report the statutory duties of the commission administrator, together with a description of the manner in which those duties are being fulfilled. Notwithstanding sub. (5s) and s. 12.13 (5), the commission shall also specify in its report the total number of investigations conducted by the commission since the last annual report and a description of the nature of each investigation. The commission shall make such further reports on the matters within its jurisdiction and such recommendations for further legislation as it deems desirable.

NOTE: Sub. (5e) is shown as affected by 2015 Wis. Acts 117 and 118 as merged by the legislative reference bureau under s. 13.92 (2) (i). The language in brackets was inserted by 2015 Wis. Act 117 but rendered without effect by the treatment by 2015 Wis. Act 118. Corrective legislation is pending.

(5f) ADVICE TO COMMISSION. The joint committee on legislative organization shall be advisory to the commission on all matters relating to operation of the commission.

(5s) ACCESS TO RECORDS. Records obtained or prepared by the commission in connection with an investigation, including the full text of any complaint received by the commission, are not subject to the right of inspection and copying under s. 19.35 (1), except as follows:

(a) The commission shall permit inspection of records that are distributed or discussed in the course of a meeting or hearing by the commission in open session.

(am) The commission shall provide to the joint committee on finance records obtained or prepared by the commission in connection with an ongoing investigation when required under sub. (2q).

(b) Investigatory records of the commission may be made public in the course of a prosecution initiated under chs. 5 to 10 or 12.

(bm) The commission shall provide investigatory records to the state auditor and the employees of the legislative audit bureau to the extent necessary for the bureau to carry out its duties under s. 13.94.

(c) The commission shall provide information from investigation and hearing records that pertains to the location of individuals and assets of individuals as requested under s. 49.22 (2m) by the department of children and families or by a county child support agency under s. 59.53 (5).

(d) If the commission commences a civil prosecution of a person for an alleged violation of chs. 5 to 10 or 12 as the result of an investigation, the person who is the subject of the investigation may authorize the commission to make available for inspection and copying under s. 19.35 (1) records of the investigation pertaining to that person if the records are available by law to the subject person and the commission shall then make those records available.

(e) The following records of the commission are open to public inspection and copying under s. 19.35 (1):

1. Any record of the action of the commission authorizing the filing of a civil complaint under sub. (2m) (c) 6.

2. Any record of the action of the commission referring a matter to a district attorney or other prosecutor for investigation or prosecution.

3. Any record containing a finding that a complaint does not raise a reasonable suspicion that a violation of the law has occurred.

4. Any record containing a finding, following an investigation, that no probable cause exists to believe that a violation of the law has occurred.

(f) The commission shall make public formal and informal advisory opinions and records obtained in connection with requests for formal or informal advisory opinions relating to matters under the jurisdiction of the commission, including the identity of individuals requesting such opinions or organizations or governmental bodies on whose behalf they are requested.

(5t) GUIDANCE FOLLOWING BINDING COURT DECISIONS. Within 2 months following the publication of a decision of a state or federal court that is binding on the commission and this state, the commission shall issue updated guidance or formal advisory opinions, commence the rule−making procedure to revise administrative rules promulgated by the commission, or request an opinion from the attorney general on the applicability of the court decision.

(6a) ADVISORY OPINIONS. (a) 1. Any individual, either personally or on behalf of an organization or governmental body, may make a request of the commission in writing, electronically, or by telephone for a formal or informal advisory opinion regarding the propriety under chs. 5 to 10 or 12 of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request of the commission a formal or informal advisory opinion regarding the propriety under chs. 5 to 10 or 12 of any matter to which the prospective appointee is or may become a party. The commission shall review a request for an advisory opinion and may issue a formal or informal written or electronic advisory opinion to the person making the request. Except as authorized or required for opinions specified in sub. (5s)

(f), the commission's deliberations and actions upon such requests shall be in meetings not open to the public. A member of the commission may, by written request, require the commission to review an advisory opinion.

2. To have legal force and effect, each formal and informal advisory opinion issued by the commission must be supported by specific legal authority under a statute or other law, or by specific case or common law authority. Each formal and informal advisory opinion shall include a citation to each statute or other law and each case or common law authority upon which the opinion is based, and shall specifically articulate or explain which parts of the cited authority are relevant to the commission's conclusion and why they are relevant.

3. No person acting in good faith upon a formal or informal advisory opinion issued by the commission under this subsection is subject to criminal or civil prosecution for so acting, if the material facts are as stated in the opinion request.

4. At each regular meeting of the commission, the administrator shall review informal advisory opinions requested of and issued by the administrator and that relate to recurring issues or issues of first impression for which no formal advisory opinion has been issued. The commission may determine to issue a formal advisory opinion adopting or modifying the informal advisory opinion. If the commission disagrees with a formal or informal advisory opinion that has been issued by or on behalf of the commission, the commission may withdraw the opinion, issue a revised formal or informal advisory opinion, or request an opinion from the attorney general. No person acting after the date of the withdrawal or issuance of the revised advisory opinion is exempted from prosecution under this subsection if the opinion upon which the person's action is based has been withdrawn or revised in relevant degree.

5. Except as authorized or required under sub. (5s) (f), no member or employee of the commission may make public the identity of the individual requesting a formal or informal advisory opinion or of individuals or organizations mentioned in the opinion.

(b) 1. The commission may authorize the commission administrator or his or her designee to issue an informal written advisory opinion or transmit an informal advisory opinion electronically on behalf of the commission, subject to such limitations as the commission deems appropriate. Every informal advisory opinion shall be consistent with applicable formal advisory opinions issued by the commission, statute or other law, and case law.

2. Any individual may request in writing, electronically, or by telephone an informal advisory opinion from the commission under this paragraph. The commission's designee shall provide a written response, a written reference to an applicable statute or law, or a written reference to a formal advisory opinion of the commission to the individual, or shall refer the request to the commission for review and the issuance of a formal advisory opinion.

3. Any person receiving an informal advisory opinion under this paragraph may, at any time, request a formal advisory opinion from the commission on the same matter.

(c) 1. Any individual may request in writing, electronically, or by telephone a formal advisory opinion from the commission or the review or modification of a formal advisory opinion issued by the commission under this paragraph. The individual making the request shall include all pertinent facts relevant to the matter. The commission shall review a request for a formal advisory opinion and may issue a formal advisory opinion to the individual making the request. Except as authorized or required for opinions specified in sub. (5s) (f), the commission's deliberations and actions upon such requests shall be in meetings not open to the public.

2. Any person requesting a formal advisory opinion under this paragraph may request a public or private hearing before the commission to discuss the opinion. The commission shall grant a request for a public or private hearing under this paragraph.

3. Promptly upon issuance of each formal advisory opinion, the commission shall publish the opinion together with the information specified under sub. (5s) (f) on the commission's Internet site.

4. If the commission declines to issue a formal advisory opinion, it may refer the matter to the attorney general or to the standing legislative oversight committees.

(7) ADMINISTRATIVE MEETINGS AND CONFERENCES. The commission shall conduct regular information and training meetings at various locations in the state for county and municipal clerks and other election officials. Administrative meetings shall be designed to explain the election laws and the forms and rules of the commission, to promote uniform procedures and to assure that clerks and other officials are made aware of the integrity and importance of the vote of each citizen. The commission may conduct conferences relating to election laws, practice and procedure. The commission may charge persons attending the administrative meetings and conferences for its costs incurred in conducting the meetings and conferences at a rate not exceeding the per capita cost incurred by the commission.

(9) STANDING. The commission has standing to commence or intervene in any civil action or proceeding for the purpose of enforcing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.

(10) STATE ELECTION ADMINISTRATION PLAN. With the approval of the joint committee on finance as provided in this subsection, the commission shall adopt and modify as necessary a state plan that meets the requirements of P.L. 107−252 to enable participation by this state in federal financial assistance programs authorized under that law. The commission shall adopt the plan and any modifications only after publishing a class 1 notice under ch. 985 or posting on the Internet a statement describing the proposed plan or modification and receiving public comment thereon. After approval of the proposed plan or any modification of the plan by the commission, the commission shall submit the proposed plan or modification to the joint committee on finance for the approval of the committee. The commission may adopt the proposed plan or modification only if the committee approves the proposed plan or modification.

(11) AIDS TO COUNTIES AND MUNICIPALITIES. From the appropriations under s. 20.510 (1) (t) and (x), the commission may provide financial assistance to eligible counties and municipalities for election administration costs in accordance with the plan adopted under sub. (10). As a condition precedent to receipt of assistance under this subsection, the commission shall enter into an agreement with the county or municipality receiving the assistance specifying the intended use of the assistance and shall ensure compliance with the terms of the agreement. Each agreement shall provide that if the federal government objects to the use of any assistance moneys provided to the county or municipality under the agreement, the county or municipality shall repay the amount of the assistance provided to the commission.

(12) VOTER EDUCATION. The commission may conduct or prescribe requirements for educational programs to inform electors about voting procedures, voting rights, and voting technology. The commission shall conduct an educational program for the purpose of educating electors who cast paper ballots, ballots that are counted at a central counting location, and absentee ballots of the effect of casting excess votes for a single office.

(13) TOLL−FREE ELECTION INFORMATION AND REQUESTS. (a) The commission shall maintain one or more toll−free telephone lines for electors 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.

(b) The commission may maintain a free access system under which an elector who votes under s. 6.96 or 6.97 may ascertain

current information concerning whether the elector's vote has been counted, and, if the vote will not be counted, the reason that it will not be counted.

(c) The commission shall maintain a freely accessible system under which a military elector, as defined in s. 6.34 (1) (a), or an overseas elector, as defined in s. 6.34 (1) (b), who casts an absentee ballot may ascertain whether the ballot has been received by the appropriate municipal clerk.

(d) The commission shall designate and maintain at least one freely accessible means of electronic communication which shall be used for the following purposes:

1. To permit a military elector, as defined in s. 6.34 (1) (a), or an overseas elector, as defined in s. 6.34 (1) (b), to request a voter registration application or an application for an absentee ballot at any election at which the elector is qualified to vote in this state.

2. To permit a military elector or an overseas elector under subd. 1. to designate whether the elector wishes to receive the applications under subd. 1. electronically or by mail.

3. To permit a municipal clerk to transmit to a military elector or an overseas elector under subd. 1. a registration application or absentee ballot application electronically or by mail, as directed by the elector under subd. 2., together with related voting, balloting, and election information.

(14) INFORMATION FROM COUNTY AND MUNICIPAL CLERKS. (a) The commission may request information from county and municipal clerks relating to election administration, performance of electronic voting systems and voting machines, and use of paper ballots in elections.

(b) The commission shall establish a subscription service whereby a person may electronically access the absentee ballot information provided under s. 6.33 (5) (a), including semiweekly updates of such information.

(c) On election night the commission shall provide a link on its Internet site to the posting of each county's election returns on each county's Internet site.

(15) REGISTRATION LIST. The commission is responsible for the design and maintenance of the official registration list under s. 6.36. The commission shall require all municipalities to use the list in every election and may require any municipality to adhere to procedures established by the commission for proper maintenance of the list.

(16) POLICIES AND PROCEDURES. (a) Annually, the commission shall adopt written policies and procedures in order to govern its internal operations and management and shall annually report such policies and procedures to the appropriate standing committees of the legislature under s. 13.172 (3).

(b) Notwithstanding par. (a), the commission may reconsider at any time any policy or procedure adopted as provided under par. (a). If, upon reconsideration, the commission revises a previously reported policy or procedure, the commission shall report the revision to the appropriate standing committees of the legislature under s. 13.172 (3).

(c) The commission may reconsider at any time any written directives or written guidance provided to the general public or to any person subject to the provisions of chs. 5 to 10 and 12 with regard to the enforcement and administration of those provisions.

(17) PAYMENTS. The commission may accept payment by credit card, debit card, or other electronic payment mechanism for any amounts owed pursuant to the administration of chs. 5 to 10 or 12, and may charge a surcharge to the payer to recover charges associated with the acceptance of that electronic payment.

(18) ELECTRONIC POLL LISTS. The commission may facilitate the creation and maintenance of electronic poll lists for purposes of s. 6.79 including entering into contracts with vendors and establishing programs for development and testing.

History: 1973 c. 334; 1975 c. 85, 93, 199; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418, 427, 447; 1979 c. 32 s. 92 (8); 1979 c. 89, 154, 328; 1983 a. 27, 484, 524, 538; 1985 a. 303; 1985 a. 304 ss. 3, 155; 1989 a. 31, 192; 1999 a. 182; 2001 a. 109; 2003 a. 35, 265, 266, 327; 2005 a. 177; 2007 a. 1 ss. 2 to 19, 94, 99, 100, 103, 104, 107, 109, 111, 112, 114, 116, 127, 128; 2007 a. 20; 2009 a. 28, 180; 2011 a. 75; 2013 a. 20, 166; 2015 a. 2, 117; 2015 a. 118 ss. 3 to 54, 266 (10); 2015 a. 261; s. 13.92 (1) (e); s. 35.17 correction in (1) (intro.).

Cross−reference: See also EL, Wis. adm. code.

Notice to the district attorney, attorney general, or governor is not a prerequisite to a civil forfeiture under sub. (1) (c). State Elections Board v. Hales, 149 Wis. 2d 306, 440 N.W.2d 579 (Ct. App. 1989).

A party being investigated by the board is not entitled under sub. (1) (b) to attend and participate in all depositions conducted by the board. Notice to the party being investigated under sub. (1) (b) is limited to the board's exercise of its subpoena power and does not relate in any way to the conduct of depositions the board may wish to take. State ex rel. Block v. Circuit Court for Dane County, 2000 WI App 72, 234 Wis. 2d 183, 610 N.W.2d 213, 00−0507.

Unless otherwise stated in a specific statute, criminal and civil forfeiture provisions of the election, lobby, and ethics laws can be enforced by a district attorney independently of the board. A referral following an investigation by the board is not required. A district attorney may request prosecutorial or investigative assistance from the attorney general in connection with any duty of the district attorney under those laws. If there has been a referral to the district attorney by the board under sub. (2m) (c) 11., 14., or 15., the district attorney must retain ultimate supervisory authority over the matter referred unless a special prosecutor has been appointed in lieu of the district attorney. OAG 10−08.

The board and district attorneys possess joint and co−equal authority to investigate possible violations of the election, lobby, or ethics laws and to prosecute civil forfeiture actions under those laws. Unless otherwise stated in a specific statutory provision, the district attorney possesses the authority to prosecute criminal proceedings under those laws. The board has no statutory authority to prosecute criminal proceedings under those laws except as stated in sub. (2m) (i). OAG 10−08.

For the attorney general to prosecute violations of the election, lobby, and ethics laws there must be a specific statute authorizing the attorney general to independently initiate the prosecution of civil and criminal actions involving violations of those laws unless there is a referral to the attorney general by the board under sub. (2m) (c) 16. or unless the attorney general or an assistant attorney general has been appointed as special prosecutor to serve in lieu of the district attorney. OAG 10−08.

5.055 Election assistance commission standards board. The commission administrator shall, in consultation with the commission, appoint an individual to represent this state as a member of the federal election assistance commission standards board. The administrator shall also conduct and supervise a process for the selection of an election official by county and municipal clerks and boards of election commissioners to represent local election officials of this state as a member of the federal election assistance commission standards board. The administrator shall ensure that the members of the federal election assistance commission standards board representing this state shall at no time be members of the same political party. Upon appointment or election of any new member of the federal election assistance commission standards board representing this state, the administrator shall transmit a notice of that member's appointment or election to the officer or agency designated by federal law.

History: 2003 a. 265; 2007 a. 1; 2015 a. 118.

5.056 Matching program with secretary of transportation. The commission administrator shall enter into the agreement with the secretary of transportation specified under s. 85.61 (1) to match personally identifiable information on the official registration list maintained by the commission under s. 6.36 (1) and the information specified in s. 6.34 (2m) with personally identifiable information maintained by the department of transportation.

History: 2003 a. 265; 2007 a. 1; 2015 a. 118, 261.

5.06 Compliance review; appeal. (1) Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. The complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. The complaint

may be accompanied by relevant supporting documents. The commission may conduct a hearing on the matter in the manner prescribed for treatment of contested cases under ch. 227 if it believes such action to be appropriate.

(2) No person who is authorized to file a complaint under sub. (1), other than the attorney general or a district attorney, may commence an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in sub. (1) without first filing a complaint under sub. (1), nor prior to disposition of the complaint by the commission. A complaint is deemed disposed of if the commission fails to transmit an acknowledgment of receipt of the complaint within 5 business days from the date of its receipt or if the commission concludes its investigation without a formal decision.

(3) A complaint under this section shall be filed promptly so as not to prejudice the rights of any other party. In no case may a complaint relating to nominations, qualifications of candidates or ballot preparation be filed later than 10 days after the complainant knew or should have known that a violation of law or abuse of discretion occurred or was proposed to occur.

(4) The commission may, on its own motion, investigate and determine whether any election official, with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections, has failed to comply with the law or abused the discretion vested in him or her by law or proposes to do so.

(5) Upon receipt of a complaint under sub. (1), or upon its own motion, the commission may order any election official to immediately transfer to its possession any original documents in the custody of the official which the commission finds to be necessary and relevant to permit review of compliance with the laws concerning nominations, qualifications of candidates, ward division and numbering, recall or ballot preparation or the proper administration of such laws.

(6) The commission may, after such investigation as it deems appropriate, summarily decide the matter before it and, by order, require any 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. The commission shall immediately transmit a copy of the order to the official. An order issued under this subsection is effective immediately or at such later time as may be specified in the order.

(7) The commission may withdraw, modify or correct an order issued under sub. (6) within a timely period if it finds such action to be appropriate.

(8) Any election official or complainant who is aggrieved by an order issued under sub. (6) may appeal the decision of the commission to circuit court for the county where the official conducts business or the complainant resides no later than 30 days after issuance of the order. Pendency of an appeal does not stay the effect of an order unless the court so orders.

(9) The court may not conduct a de novo proceeding with respect to any findings of fact or factual matters upon which the commission has made a determination, or could have made a determination if the parties had properly presented the disputed matters to the commission for its consideration. The court shall summarily hear and determine all contested issues of law and shall affirm, reverse or modify the determination of the commission, according due weight to the experience, technical competence and specialized knowledge of the commission, pursuant to the applicable standards for review of agency decisions under s. 227.57.

(10) This section does not apply to matters arising in connection with a recount under s. 9.01.

History: 1983 a. 484; 1985 a. 182 s. 57; 1985 a. 304; 1989 a. 192; 2015 a. 118 s. 266 (10).

The plaintiff's failure to comply with the method of review prescribed by this section deprived the circuit court of jurisdiction to hear the plaintiff's original action regarding election irregularities. Kuechmann v. LaCrosse School District, 170 Wis. 2d 218, 487 N.W.2d 639 (Ct. App. 1992).

5.061 Compliance with federal Help America Vote Act. **(1)** Whenever any person believes that a violation of Title III of P.L. 107−252 has occurred, is occurring, or is proposed to occur with respect to an election for national office in this state, that person may file a written, verified complaint with the commission.

(2) If the commission receives more than one complaint under sub. (1) relating to the same subject matter, the commission may consolidate the complaints for purposes of this section.

(3) A complainant under sub. (1) or any of the complainants in a consolidated complaint under sub. (2) may request a hearing and the matter shall then be treated as a contested case under ch. 227, except that the commission shall make a final determination with respect to the merits of the complaint and issue a decision within 89 days of the time that the complaint or the earliest of any complaints was filed, unless the complainant, or each of any complainants whose complaints are consolidated, consents to a specified longer period.

(4) If the commission finds the complaint to be without merit, it shall issue a decision dismissing the complaint. If the commission finds that the violation alleged in the complaint has occurred, is occurring, or is proposed to occur, the commission shall order appropriate relief, except that the commission shall not issue any order under this subsection affecting the right of any person to hold an elective office or affecting the canvass of an election on or after the date of that election.

History: 2003 a. 265; 2015 a. 118 s. 266 (10).

5.07 Action to compel compliance. Whenever a violation of the laws regulating the conduct of elections or election campaigns, other than a violation of the laws regulating campaign financing, occurs or is proposed to occur, the attorney general or the district attorney of the county where the violation occurs or is proposed to occur may sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief as may be appropriate to compel compliance with the law. No bond is required in such actions.

History: 1973 c. 334; 1983 a. 484 s. 136m; Stats. 1983 s. 5.07; 1985 a. 304; 2015 a. 118.

5.08 Petition for enforcement. In addition to or in lieu of filing a complaint, any elector may file a verified petition alleging such facts as are within his or her knowledge to indicate that an election official has failed or is failing to comply with any law regulating the conduct of elections or election campaigns, other than a law regulating campaign financing, or proposes to act in a manner inconsistent with such a law, and requesting that an action be commenced for injunctive relief, a writ of mandamus or prohibition or other such legal or equitable relief as may be appropriate to compel compliance with the law. The petition shall be filed with the district attorney for the county having jurisdiction to prosecute the alleged failure to comply under s. 978.05 (1) and (2). The district attorney may then commence the action or dismiss the petition. If the district attorney declines to act upon the petition or if the district attorney fails to act upon the petition within 15 days of the date of filing, the petitioner may file the same petition with the attorney general, who may then commence the action.

History: 1983 a. 484; 2007 a. 1; 2015 a. 118.

5.081 Petition for enforcement of voting rights. The attorney general shall accept a verified petition from any person alleging failure to comply with section 2 of the federal voting rights act, 42 USC 1973 (a) and (b). The attorney general may commence an action or proceeding in any court of competent jurisdiction on behalf of any elector of this state whose rights under 42 USC 1973 (a) and (b) are violated.

History: 1985 a. 312.

5.10 Presidential electors. Although the names of the electors do not appear on the ballot and no reference is made to them,

a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector's vote is cast. Under chs. 5 to 12, all references to the presidential election, the casting of votes and the canvassing of votes for president, or for president and vice president, mean votes for them through their pledged presidential electors.

History: 1973 c. 334 s. 2; Stats. 1973 s. 5.10; 1977 c. 26; 1979 c. 89, 311.

5.15 Division of municipalities into wards. (1) (a) 1. Every city, village, and town in this state shall by ordinance or resolution of its common council or village or town board, respectively, be divided into wards as provided in this section, except as authorized in sub. (2). The boundaries of the wards established under this section, and the number assigned to each ward, are intended to be as permanent as possible, and to this end each ward shall when created contain a population at a convenient point within the applicable population range under sub. (2) (b), with due consideration for the known trends of population increase or decrease within that part of the municipality in which the ward is located.

2. Once established, the boundaries of each ward shall remain unchanged until a further decennial federal census of population indicates that the population of a ward is then above or below the applicable population range, or until the ward boundaries are required to be changed to permit creation of supervisory or aldermanic districts of substantially equal population or to enhance the participation of members of a racial or language minority group in the political process and their ability to elect representatives of their choice, or until otherwise authorized or required under this section.

3. If the population of a ward has increased above the maximum of its population range or if the population of a ward must be decreased for a reason specified in subd. 2., the ward shall be divided into 2 or more wards in compliance with sub. (2) (b). If the population of a ward has decreased below the minimum of its population range or if the population of a ward must be increased for a reason specified in subd. 2., the ward shall, if possible, be combined with an adjoining ward, or the underpopulated ward and one adjoining ward shall be combined and together subdivided into 2 or more wards in compliance with sub. (2).

(b) Except as authorized in sub. (2) (a), within 60 days after the receipt of a tentative supervisory district plan and written statement, if any, from the county board of each county in which a municipality is located, the governing body of the municipality shall adjust its wards according to the schedule shown in sub. (2). All territory contained within the municipality, and only the territory so contained, on April 1 of the year of the federal decennial census shall be contained within a ward established under the division ordinance or resolution. Except as authorized in sub. (2), each ward shall consist of whole blocks, as utilized by the U.S. bureau of the census in the most recent federal decennial census. To suit the convenience of the voters residing therein each ward shall, as far as practicable, be kept compact and observe the community of interest of existing neighborhoods and other settlements. All territory within a ward shall be contiguous, except for island territory as defined in sub. (2) (f) 3. Enactment or adoption of a division ordinance or resolution requires the affirmative vote of a majority of the members of the governing body.

(c) The wards established by municipal governing bodies in a division ordinance or resolution enacted or adopted under this section shall govern the adjustment of supervisory districts under s. 59.10 (2) (a) and (3) (b) and of aldermanic districts under s. 62.08 (1) for the purpose of local elections beginning on January 1 of the 2nd year commencing after the year of the census until revised under this section on the basis of the results of the next decennial census of population unless adjusted under sub. (2) (f) 4. or 5., (6) (a), or (7), or unless a division is required to effect an act of the legislature redistricting legislative districts under article IV, section 3, of the constitution or redistricting congressional districts. The populations of wards under each decennial ward division shall be determined on the basis of the federal decennial census and any official corrections to the census issued on or before the date of adoption of the division ordinance or resolution to reflect the correct populations of the municipality and the blocks within the municipality on April 1 of the year of the census.

(d) Every ward shall be wholly contained within a single county.

(2) (a) Except as required by par. (d), no city electing its common council at large in which the total population is less than 1,000, and no village or town in which the total population is less than 1,000 is required to be divided into wards under this section, but any such city, village or town may divide itself into wards if the creation of wards facilitates the administration of elections. No village or town located in a county having only one town is required to be divided into wards under this section.

(b) Except for wards created to effect an act of the legislature redistricting legislative districts under article IV, section 3, of the constitution or redistricting congressional districts and except as authorized under pars. (bm), (c), (e), and (f) and sub. (7), wards shall contain the following numbers of inhabitants:

1. In any city in which the population is at least 150,000, each ward shall contain not less than 1,000 nor more than 4,000 inhabitants.

2. In any city in which the population is at least 39,000 but less than 150,000, each ward shall contain not less than 800 nor more than 3,200 inhabitants.

3. In any city, village or town in which the population is at least 10,000 but less than 39,000, each ward shall contain not less than 600 nor more than 2,100 inhabitants.

4. In any city, village or town in which the population is less than 10,000, each ward shall contain not less than 300 nor more than 1,000 inhabitants.

(bm) Every city electing the members of its common council from aldermanic districts shall assemble the blocks wholly or partially contained within the city into wards that will enable the creation of aldermanic districts that are substantially equal in population. If a block is partly contained within the city, the city shall divide the block to form a ward containing the portion of the block that lies within the city.

(c) If the population of a block exceeds the maximum population for a ward otherwise specified in this subsection, such block shall be constituted a ward by itself, except that if the population of a block substantially exceeds the population of proposed aldermanic districts in a city so that, if the block were to constitute an aldermanic district, the populations of the aldermanic districts in the city would not be substantially equal, the city shall divide the block to permit assembly into wards that will enable creation of aldermanic districts that are substantially equal in population.

(cm) Any division of blocks under this section shall be based on the best evidence available. In this paragraph, "best evidence" includes, but is not limited to, the population of the block and other information received from the U.S. bureau of the census and such data as number of housing units, utility connections and vehicle registrations or a special census conducted locally. For each ward so established, the population estimate shall be correlated with the results of the most recent federal decennial census, so that the total population reported for all wards in the municipality agrees with the census results.

(d) Every municipality shall make a good faith effort to accommodate the tentative plan submitted by the county or counties in which it is located under s. 59.10 (2) (a) or (3) (b) 1., and shall divide itself into wards in such a manner that will permit the creation of county supervisory districts in accordance with the population requirements for the plan specified in s. 59.10 (2) (a) or (3) (b) 1.

(e) If territory is detached from a city, village or town after April 1 of the year of the federal decennial census, and the remaining portion of the ward to which it was attached falls below the

prescribed minimum population for the applicable range, the remaining portion of the population may be constituted a ward by itself.

(f) Any city, village or town may establish a ward below the prescribed minimum population for the applicable range whenever the proposed ward is established under par. (a), (d) or (e) or whenever the proposed ward contains solely:

1. That part of a city or village situated in a county other than the county in which the major part of the municipality is located.

2. That part of a city, village or town belonging to a school district other than the school district to which the major part of the municipality belongs.

3. Island territory containing a resident population. In this subdivision, "island territory" means territory surrounded by water, or noncontiguous territory which is separated by the territory of another municipality or by water, or both, from the major part of the municipality to which it belongs.

4. New territory which becomes a part of a city, village or town after April 1 of the year of the federal decennial census.

5. Territory that lies between an actual municipal boundary that existed on April 1 of the year of a federal decennial census and an intersecting municipal boundary that deviates from the actual municipal boundary on that date if the deviating boundary was used by the U.S. bureau of the census to enumerate the population of the municipality in that census.

(g) If a block is affected by an annexation or detachment which establishes a municipal boundary that subdivides the block, the municipalities in which the block is contained shall incorporate only the portion of the block contained within their boundaries in their division ordinances or resolutions.

(4) (a) Except as provided in par. (c), the division ordinance or resolution shall number all wards in the municipality with unique whole numbers in consecutive order, beginning with the number one, shall designate the polling place for each ward, and shall describe the boundaries of each ward consistent with the conventions set forth in s. 4.003. The ordinance or resolution shall be accompanied by a list of the block numbers used by the U.S. bureau of the census that are wholly or partly contained within each ward, with any block numbers partly contained within a ward identified, and a map of the municipality which illustrates the revised ward boundaries. If the legislature, in an act redistricting legislative districts under article IV, section 3, of the constitution, or in redistricting congressional districts, establishes a district boundary within a municipality that does not coincide with the boundary of a ward established under the ordinance or resolution of the municipality, the municipal governing body shall, no later than April 10 of the 2nd year following the year of the federal decennial census on which the act is based, amend the ordinance or resolution to the extent required to effect the act. The amended ordinance or resolution shall designate the polling place for any ward that is created to effect the legislative act. Nothing in this paragraph shall be construed to compel a county or city to alter or redraw supervisory or aldermanic districts.

(b) Within 5 days after adoption or enactment of an ordinance or resolution under this section or any amendment thereto, the municipal clerk shall transmit one copy of the ordinance or resolution or the amendment to the county clerk of each county in which the municipality is contained, accompanied by the list and map specified in par. (a). Each copy shall identify the name of the municipality and the county or counties in which it is located.

(bg) No later than October 15 of each year following the year of a federal decennial census, each municipal clerk shall file a report with the county clerk of each county in which the municipality is contained confirming the boundaries of the municipality and of all wards in the municipality. The report shall be accompanied by a map of the municipality and a list of the block numbers of which the municipality and each ward within the municipality are comprised. Within 5 days after notice to the municipal clerk of a judgment that has the effect of changing the municipal boundaries, the clerk shall file the same report. Each report filed under this paragraph shall identify the name of the municipality and the county or counties in which it is located.

(br) 1. Except as provided in subd. 2., no later than January 15 and July 15 of each year, the county clerk shall transmit to the legislative technology services bureau a report confirming the boundaries of each municipality, ward, and supervisory district in the county together with a map of the county, in an electronic format approved by the legislative technology services bureau. Each report shall be current to the nearest January 1 or July 1 preceding the date of the report.

2. In each year following the year of a federal decennial census, the July report shall instead be transmitted no later than November 1 and shall be current to the date of the report. The November 1 report shall be accompanied by a list of the block numbers of which the county and each municipality and ward within the county are comprised.

(c) Wards that are created to effect an act of the legislature redistricting legislative districts or congressional districts and wards authorized under sub. (2) (bm), (c), (e), or (f) or (7) may be numbered with a combination of whole numbers and letters.

(5) When a town is divided into wards, the annual town meeting shall be held in a location authorized under s. 60.11 (3) (a).

(6) (a) Following any municipality−wide special federal census of population, the governing body of the municipality in which the special census was held may, by ordinance or resolution, adjust the ward boundaries, but no ward line adjustment may cross the boundary of a congressional, assembly, or supervisory district. The municipal clerk shall transmit copies of the ordinance or resolution in compliance with sub. (4) (b).

(b) No later than 30 days before each election, the governing body of any municipality may by resolution combine 2 or more wards for voting purposes to facilitate using a common polling place. Whenever wards are so combined, the original ward numbers shall continue to be utilized for all official purposes. Except as otherwise authorized under this paragraph, every municipality having a population of 35,000 or more shall maintain separate returns for each ward so combined. In municipalities having a population of 35,000 or more, the governing body may provide in a resolution that returns for any ward having a population of 20 or less be combined with returns for any adjacent ward, if the total population of the combined wards does not exceed the applicable population range under sub. (2) (b) for wards in that municipality. In municipalities having a population of less than 35,000, the governing body may provide in the resolution that returns shall be maintained only for each group of combined wards at any election. Whenever a governing body provides that returns shall be maintained only for combined wards under this paragraph, the municipality shall report separate results for each separate ballot required under ss. 5.58 to 5.64. The municipal clerk shall transmit a copy of the resolution to the county clerk of each county in which the municipality is contained. In municipalities having a population of less than 35,000, the resolution shall remain in effect for each election until modified or rescinded, or until a new division is made under this section. Whenever needed for purposes of this paragraph, the municipal clerk shall determine the population of each ward in his or her municipality. If the population of a ward cannot be determined from census results, the clerk shall determine the population of the smallest unit encompassing the entire ward that can be determined from census results. The clerk shall then divide the land area of the ward by the land area of that unit. The clerk shall then multiply that result by the population of the unit to determine the population of the ward for purposes of this paragraph.

(7) If a new municipality is created or if part of a municipality is annexed to a city or village during a decennial period after April 1 of the year of the federal decennial census, the governing body of any municipality to which territory is attached or from which

territory is detached, without regard to the time provisions of sub. (1) (b), may, by ordinance or resolution, create new wards or adjust the existing wards in that municipality to the extent required to reflect the change. If a municipality is consolidated with another municipality during a decennial period after April 1 of the year of the federal decennial census, the governing body of the consolidated municipality, without regard to the time provisions under sub. (1) (b), may, by ordinance or resolution, create new wards or adjust the existing wards of the municipality to the extent required to reflect the change. No ward line adjustment under this subsection may cross the boundary of a congressional, assembly, or supervisory district. Within 5 days after adoption of the ordinance or resolution, the municipal clerk shall transmit copies of the ordinance or resolution making the adjustment to the county clerk in compliance with sub. (4) (b).

(8) Until divided, all elections are held in the established wards.

History: 1971 c. 304 ss. 3 to 5, 29 (2); 1977 c. 26, 418, 427, 449; 1979 c. 260; 1981 c. 4 ss. 2 to 10, 18; 1981 c. 314; 1983 a. 29, 192, 442; 1983 a. 484 ss. 8e, 174; 1983 a. 538; 1985 a. 304 ss. 8 to 10, 12; 1987 a. 391; 1991 a. 5, 143, 315; 1993 a. 213; 1995 a. 201; 1999 a. 182; 2005 a. 149, 312; 2011 a. 39, 75; 2013 a. 155; 2015 a. 55.

City and county apportionment is discussed. City of Janesville v. Rock County, 107 Wis. 2d 187, 319 N.W.2d 891 (Ct. App. 1982).

The court properly voided the city's plan and adopted the county's plan, even though the county did not adopt the plan within 60 days of receiving census data. County of La Crosse v. City of La Crosse, 108 Wis. 2d 560, 322 N.W.2d 531 (Ct. App. 1982).

5.18 Enforcement of division requirement. If any municipality fails to comply with s. 5.15, the county in which the municipality is located or any elector of the municipality may submit to the circuit court for any county in which the municipality is located within 14 days from the expiration of the 60−day period under s. 5.15 (1) (b) a proposed plan for the division of the municipality into wards in compliance with this section. If the circuit court finds that the existing division of the municipality into wards fails to comply with s. 5.15, it shall review the plan submitted by the petitioner and after reasonable notice to the municipality may promulgate the plan, or any other plan in compliance with s. 5.15, as a temporary ward plan for the municipality to remain in effect until superseded by a ward plan enacted or adopted by the governing body in compliance with s. 5.15.

History: 1985 a. 304 ss. 9, 11, 12; 2011 a. 39.

5.25 Polling places. (1) All elections under chs. 5 to 12 shall be held at the polling places provided in this section. The places chosen shall be public buildings, unless the use of a public building for this purpose is impracticable or the use of a nonpublic building better serves the needs of the electorate, as determined by the authority charged with the responsibility for establishing polling places under sub. (2).

(2) In cities over 500,000 population, polling shall be at the places established by the board of election commissioners. In all other cities and in villages and towns, polling shall be at the places established by the governing body.

(3) Polling places shall be established for each election at least 30 days before the election.

(4) (a) Each polling place shall be accessible to all individuals with disabilities. The commission shall ensure that the voting system used at each polling place will permit all individuals with disabilities to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place. This paragraph does not apply to any individual who is disqualified from voting under s. 6.03 (1) (a).

(b) In any jurisdiction that is subject to the requirement under 42 USC 1973aa−1a to provide voting materials in any language other than English, the commission shall ensure that the voting system used at each polling place in that jurisdiction is in compliance with 42 USC 1973aa−1a.

(d) No later than June 30 of each odd−numbered year, the commission shall submit a report on impediments to voting faced by elderly and handicapped individuals to the appropriate standing committees of the legislature under s. 13.172 (3). In preparing its report under this paragraph, the commission shall consult with appropriate advocacy groups representing the elderly and handicapped populations.

(5) (a) Except as authorized in par. (b), all electors within a ward shall vote at the same polling place.

(b) The municipal clerk or board of election commissioners of a municipality in which an elderly or handicapped elector resides may reassign the elector to a polling place within the municipality other than the polling place serving the elector's residence in order to permit the elector to utilize a polling place that is accessible to elderly or handicapped individuals.

(c) The electors of more than one ward in the same municipality may vote at a single polling place.

History: 1975 c. 275; 1977 c. 427; 1979 c. 89; 1983 a. 532; 1985 a. 304, 332; 1987 a. 391; 1989 a. 192; 1999 a. 182; 2003 a. 265; 2011 a. 75; 2015 a. 118 s. 266 (10).

5.35 Polling place requirements. (1) NATIONAL FLAG. On election days, every polling place shall properly display the national flag during all hours the polls are open.

(2) VOTING BOOTHS. There shall be one voting booth for every 200 electors who voted at the last general election. The booths shall have a surface on which to write or work and be sufficiently enclosed to assure privacy for the elector and anyone lawfully assisting the elector while marking the elector's ballot.

(3) BALLOT BOXES. Where the voting procedure makes it necessary, there shall be a separate ballot box for each form of ballot at each polling place. There shall be a suitable lock and key for each, and an opening no larger than is sufficient to receive a single ballot or a single folded ballot if the box is used for deposit of paper ballots. If the electors of more than one ward use the same polling place, there shall be separate ballot boxes provided for the electors of each ward, unless combined ballot boxes are authorized in accordance with s. 5.15 (6) (b).

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

(5) ACTIVITIES RESTRICTED. No polling place may be situated so as to interfere with or distract election officials from carrying out their duties. The municipal clerk and election inspectors shall prevent interference with and distraction of electors at polling places.

(6) POSTING REQUIREMENTS. (a) At each polling place in the state, the municipal clerk or board of election commissioners shall post the following materials, positioned so that they may be readily observed by electors entering the polling place or waiting in line to vote:

1. The relevant portions of the voting instructions in the type B notice for the election as specified in s. 10.02 (3) and, for each referendum on the ballot, the text of the type C notice specified in s. 10.01 (2) (c).

2. A copy of the election fraud laws provided in s. 12.13 (1) and (3) (intro), (d), (f), (g), (k), (L), (o), (q), (r), (u), and (x), together with the applicable penalties provided in s. 12.60 (1).

2m. General information prescribed by the commission on federal laws relating to election fraud and misrepresentation in federal elections.

3. Two sample ballots prepared under s. 5.66 (2).

4. The date of the election and the hours during which the polling place is open.

4a. Instructions prescribed by the commission for electors for whom proof of identification is required under s. 6.79 (2) or for whom proof of residence under s. 6.34 is required under s. 6.55 (2).

4b. General information prescribed by the commission concerning voting rights under applicable state and federal laws, including the method of redress for any alleged violations of those rights.

5. Any other voting information directed to be posted by the commission.

(b) At each polling place in the state where a consolidated ballot under s. 5.655 is used or an electronic voting system is utilized at a partisan primary election incorporating a ballot upon which electors may mark votes for candidates of more than one recognized political party, the municipal clerk or board of election commissioners shall prominently post a sign in the form prescribed by the commission warning electors in substance that on any ballot with votes cast for candidates of more than one recognized political party, no votes cast for any candidates for partisan office will be counted unless a preference for a party is made. If the elector designates a preference, only votes cast for candidates of that preference will be counted.

(c) At each polling place located in a municipality that is served by more than one polling place for an election, the municipal clerk or board of election commissioners shall prominently post a map of the geographic area served by the polling place for that election. The posting shall clearly show the boundaries of the ward or wards served by the polling place for that election.

History: 1975 c. 85, 199; 1977 c. 427; 1979 c. 260, 311, 355; 1981 c. 4, 20; 1983 a. 484; 1985 a. 304; 1999 a. 182; 2001 a. 16; 2003 a. 265; 2005 a. 451; 2011 a. 23, 32; 2015 a. 118 s. 266 (10).

5.36 Notice of voting by individuals with disabilities. Any individual with a disability may notify a municipal clerk that he or she intends to vote at a polling place on election day and may request that a specific type of accommodation be provided that will facilitate his or her voting.

History: 2003 a. 265.

5.37 Voting machine requirements. (1) Voting machines shall give every elector a reasonable opportunity to vote for any person for any office and on any proposition the elector is entitled to vote on, assure privacy to the elector so no one will know how the elector is voting or has voted, preclude the electors from voting for persons or propositions upon which they are not entitled to vote and from voting more than once for the same office or on the same proposition. Voting machines shall be constructed to lock so they cannot be manipulated, tampered with, or show the number of votes registered for any candidate or proposition while voting is in progress. The machines shall permit voting a split ticket and shall record each vote cast.

(2) When 2 or more wards or aldermanic districts are joined to use a voting machine, under s. 5.15 (6) (b), the machine shall be constructed to allow the electors to vote for all nominated candidates and issues for their aldermanic district or ward, but for no other.

(3) For presidential electors one device shall be provided to vote for all of one party's electoral candidates at the same time. The device shall be opposite or adjacent to the names of the party's candidates for president and vice president.

(4) Voting machines may be used at primary elections when they comply with subs. (1) and (2) and the following provisions: All candidates' names entitled to appear on the ballots at the primary shall appear on the machine; the elector cannot vote for candidates of more than one party, whenever the restriction applies; the elector may secretly select the party for which he or she wishes to vote; the elector may vote for as many candidates for each office as he or she is lawfully entitled to vote for, but no more.

(5) Polling places may have more than one voting machine.

History: 1971 c. 304 s. 29 (1), (2); 1977 c. 107, 427; 1981 c. 314; 1983 a. 484; 1991 a. 316; 1999 a. 182; 2011 a. 23, 32.

State action in presidential candidate selection. 1976 WLR 1269.

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

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

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

(a) For any territory which is included in a portion of a congressional district, legislative district, county supervisory district, school district, technical college district, sewerage district or sanitary district contained within the municipality for so long as the number of electors residing in the territory does not exceed 100.

(b) Whenever the municipality is precluded under s. 7.23 (2) from clearing the recorders on a sufficient number of voting machines to serve the electors at the election.

(c) Whenever such action is authorized under s. 7.15 (6).

(d) Whenever the municipal clerk or board of election commissioners reassigns an elector to a polling place other than the one serving the elector's residence under s. 5.25 (5) (b).

(4) Notwithstanding sub. (1), a municipality which utilizes voting machines at a polling place shall not utilize a voting machine to receive the ballot of an elector who receives assistance under s. 6.82 (1) (a) or whose vote is challenged under ss. 6.92 to 6.94.

(5) A municipality which utilizes voting machines at a polling place shall not utilize the machines to receive the vote of an elector who declares to the chief inspector that, due to physical disability, the elector is unable to depress a button or lever on a machine.

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

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

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

History: 1971 c. 304 s. 29 (2); 1973 c. 112; 1977 c. 427; 1979 c. 235, 311, 355; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1993 a. 399; 2003 a. 265; 2007 a. 1; 2015 a. 118 ss. 62, 266 (10).

SUBCHAPTER II

BALLOT FORM

5.51 General provisions. (1) The type face used on all paper ballots shall be easy to read.

(2) The paper used for ballots shall be 35 pounds per ream for sheets 24 inches by 36 inches. If a different size sheet is used, the weight per ream shall be proportioned accordingly, but shall meet this standard. This subsection does not apply to ballots used with electronic voting systems.

(3) All paper ballots shall be of sufficient width and length to provide space for all matter required to be printed on them. Except on ballots used with electronic voting systems, all ballot columns shall be separated by lines at least one−eighth inch in width.

(4) No stickers may be placed on a ballot by election officials except under s. 7.37 (6). Any other stickers applied by them shall not be counted.

(5) Each official ballot shall be printed on paper of uniform color. Different colors shall be used to distinguish office and referendum ballots and different colors may be used to distinguish separate ballots for different offices. Sample ballots shall be printed on a different color paper than the official ballots, and need not have the endorsement and certificate.

(6) All candidates' names for the same office shall be placed, projected or composed on the ballot in the same size, style and color of type. The style and size of type shall conform substantially to the official ballot forms prescribed by the commission under s. 7.08 (1) (a).

(7) In partisan primary elections, all ballots shall be of uniform color and size, and the same type of paper shall be used for all ballots.

(8) Unless otherwise specifically provided, the form of all ballots shall conform to the ballot forms prescribed by the commission under s. 7.08 (1) (a).

History: 1979 c. 260, 311; 1981 c. 377; 1983 a. 484 s. 174; 1985 a. 304; 1987 a. 391; 1999 a. 182; 2005 a. 92; 2015 a. 118 s. 266 (10).

5.52 Multi−candidate elections. If more than one individual is to be elected to the same office from the same jurisdiction or district, the ballot shall provide at the top of the column or to the right of the row for that office: "Vote for not more than .... candidates.".

History: 1985 a. 304.

5.53 Voting machine ballots. (1) Voting machine ballots shall be placed, projected or composed on a board or screen inside the machine, under s. 5.64 and may be arranged in either columns or rows. The type face shall be easy to read, and the type size may be no smaller than 8 point.

(2) Where separate ballots are provided for, the names or questions shall be placed in separate columns or rows upon the machines so they are voted on separately, except as otherwise provided for referenda under s. 5.64 (2) (c).

History: 1979 c. 260, 311; 1981 c. 377 ss. 4, 5; 1999 a. 182.

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

History: 1977 c. 427; 1979 c. 260. 311; 1983 a. 484 s. 172 (3); 1985 a. 304; 1989 a. 192; 2001 a. 16, 104.

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

History: 1985 a. 304; 1997 a. 250; 1999 a. 182; 2001 a. 16; 2003 a. 265.

5.56 Multiple columns and rows. Whenever the number of candidates for any office requires the use of more than one row or column on a voting machine or whenever the official or agency having the responsibility to determine ballot positions determines that the number of candidates for an office requires the use of more than one column on a ballot, the official or agency having such responsibility shall require that the rows or columns be rotated in such a manner that all rows are positioned on top, or all columns are positioned to the left, in an equal number of wards or election districts. If the number of wards and election districts in which voting for an office is conducted is not equally divisible, the position of the rows or columns in the remaining wards or election districts shall be determined by the official or agency by the drawing of lots. The number of columns or rows shall be determined at the same time that the positions of the candidates' names are determined for each primary and election.

History: 1981 c. 377 s. 5.

5.58 Spring primary ballots. (1a) GENERALLY. At spring primary elections the ballots under subs. (1b) to (2m), when necessary, shall be provided for each ward, except as authorized in s. 5.655. Only nonpartisan candidates nominated for office by nomination papers shall have their names placed on the official spring primary ballot under the proper office designation, but the ballots shall allow room for write−in candidates.

(1b) MUNICIPAL; COUNTY SUPERVISOR BALLOTS. (am) There shall be separate ballots for municipal and county primaries, except as authorized in s. 5.655.

(bm) For all cities the official spring primary ballot shall be arranged by the municipal clerk, using the same method as that used by the commission under s. 5.60 (1) (b).

(cm) Towns and villages holding a primary under s. 8.05 shall arrange the ballot in accordance with the form prescribed by the commission under s. 7.08 (1) (a), which shall be the same form as provided in s. 5.60 (5) and (6), insofar as possible.

(1c) MUNICIPAL JUDGE. There shall be a separate ballot for municipal judges if they are elected under s. 755.01 (4), except as authorized in s. 5.655. Arrangement of the names on the ballot shall be determined by the county clerk or the executive director of the county board of election commissioners of the county having the largest portion of the population in the jurisdiction served by the judge.

(1g) SCHOOL DISTRICT. (a) There shall be a separate ballot for school district officers when so required, except as authorized in s. 5.655.

(b) In 1st class cities, the names of the candidates for the seat of the member elected at−large to the board of school directors shall be placed on the official city primary ballot and, except as authorized in s. 5.655, there shall be a separate ballot giving the names of the candidates for any seat to be filled on the board of school directors from any election district. All names of candidates for the at−large seat shall be placed in one or more separate columns or rows on the ballot.

(c) The arrangement of candidates for school board seats shall be determined by the school district clerk or the executive director of the city board of election commissioners by the drawing of lots not later than the 2nd Tuesday in January, or the next day if the first Tuesday is a holiday. The method of determining arrangement shall be the same as provided in s. 5.60 (1) (b). Sufficient space shall be provided on the ballot for write−in candidates.

(1r) TOWN SANITARY DISTRICT COMMISSION. There shall be a separate ballot for members of the town sanitary district commission if commissioners are elected under s. 60.74 and the boundaries of the district are not coterminous with one or more towns, except as authorized in s. 5.655. Candidates for different seats

shall be listed in separate columns or rows if more than one seat is contested in any election. Arrangement of the names on the ballot shall be determined by the town clerk of the town whose board of supervisors directs the election, in the same manner as provided in s. 5.60 (1) (b).

(2) STATE SUPERINTENDENT OF PUBLIC INSTRUCTION; JUDICIARY; COUNTY EXECUTIVE; COUNTY COMPTROLLER; AND COUNTY SUPERVISORS. There shall be one separate ballot for state superintendent, judicial officers, county executive under s. 59.17, and county supervisor, except as authorized in s. 5.655. In counties having a population of 750,000 or more, the ballot shall also include the office of comptroller and in counties having a population of 500,000 or more, the ballot shall also include those offices under s. 8.11 (2) (b) and (2m). The arrangement of names of candidates for state superintendent, justice, court of appeals judge, and circuit court judge shall be determined by the commission in the manner specified in s. 5.60 (1) (b). Arrangement of the names of candidates for county executive, county comptroller, and county supervisor shall be determined by the county clerk or by the executive director of the county board of election commissioners in the manner specified in s. 5.60 (1) (b).

(2m) METROPOLITAN SEWERAGE COMMISSION. Except as authorized in s. 5.655, there shall be a separate ballot for members of the metropolitan sewerage commission if commissioners are elected under s. 200.09 (11) (am), with candidates for different seats listed in separate columns or rows if more than one seat is contested at any election. Arrangement of the names on the ballot shall be determined by the elections commission.

(3) NAMES ON SPRING BALLOT. Only 2 candidates for state superintendent, for any judicial office, for any elected seat on a metropolitan sewerage commission or town sanitary district commission, in counties having a population of 750,000 or more, only 2 candidates for the office of comptroller, in counties having a population of 500,000 or more only 2 candidates for member of the board of supervisors within each district, in counties having a population of less than 500,000 only 2 candidates for each member of the county board of supervisors from each district or numbered seat or only 4 candidates for each 2 members of the county board of supervisors from each district whenever 2 supervisors are elected to unnumbered seats from the same district, in 1st class cities only 2 candidates for any at−large seat and only 2 candidates from any election district to be elected to the board of school directors, in school districts electing school board members to numbered seats, or pursuant to an apportionment plan or district representation plan, only 2 school board candidates for each numbered seat or within each district, and twice as many candidates as are to be elected members of other school boards or other elective officers receiving the highest number of votes at the primary shall be nominees for the office at the spring election. Only their names shall appear on the official spring ballot.

History: 1971 c. 304 ss. 6 to 8, 29 (2); 1973 c. 134, 243; 1973 c. 334 s. 57 (2); 1973 c. 340; 1975 c. 93; 1977 c. 187, 272, 445, 449; 1979 c. 32, 221, 260; 1981 c. 20, 377; 1983 a. 484; 1983 a. 532 s. 36; 1985 a. 29 s. 3202 (56); 1985 a. 89, 225; 1985 a. 304 ss. 27, 27m, 155; 1989 a. 192, 290; 1991 a. 5; 1993 a. 266; 1995 a. 16 s. 2; 1995 a. 27 s. 9145 (1); 1995 a. 201, 219; 1997 a. 35; 1999 a. 150 s. 672; 1999 a. 182; 2003 a. 24 ss. 3, 4; 2005 a. 149; 2011 a. 45, 62; 2015 a. 118 ss. 63, 64, 266 (10).

5.60 Spring election ballots. At spring elections all of the following ballots, when necessary, shall be provided for each ward, except as authorized in s. 5.655:

(1) STATE SUPERINTENDENT; JUDICIARY; COUNTY EXECUTIVE; COUNTY COMPTROLLER; AND COUNTY SUPERVISORS. (ag) There shall be one separate ballot for state superintendent, judicial officers, county executive, county comptroller in counties having a population of 750,000 or more, and county supervisor, except as authorized in s. 5.655. For county supervisor, the ballot shall be prepared in accordance with ss. 5.58 (2) and 59.10 (3). Arrangement of the names of candidates for county executive, county comptroller, county supervisor, and municipal judge, if the judge is elected under s. 755.01 (4), shall be determined by the county clerk or the executive director of the county board of election commissioners determining ballot arrangement under s. 5.58 (1c), in the manner prescribed in par. (b).

(ar) The names of candidates for the same office shall be placed in the same column. No party designation may appear on the official ballot. Unless no candidate is certified to appear on the ballot for a state office, a space shall be provided on the ballot for electors to write in the name of a person for each office, regardless of whether there is a primary for that office.

(b) The elections commission shall certify the candidates' names and designate the official ballot arrangement for candidates for state superintendent, justice, court of appeals judge, and for circuit judge and for metropolitan sewerage commission commissioners elected under s. 200.09 (11) (am). The arrangement of names of all candidates on the ballot whose nomination papers are filed with the elections commission shall be determined by the elections commission by the drawing of lots not later than the 2nd Tuesday in January, or the next day if the first Tuesday is a holiday. Whenever a primary is held for an office, a 2nd drawing of all candidates for that office shall be held by or under the supervision of the elections commission not later than the 3rd day following the completion of the primary canvass to determine the arrangement of candidates on the election ballot.

(c) When 2 or more judges of the same court are to be elected, the official ballot shall contain the names of all candidates, shall state the number of judges to be elected and the number of candidates for whom each elector may vote. Each candidacy shall show the branch being filled.

(2) MUNICIPAL JUDGE. If the election is under s. 755.01 (4), there shall be a separate ballot listing the names of all of the candidates, except as authorized in s. 5.655.

(3) CITY. (ag) Except as authorized in s. 5.655, there shall be a separate ballot giving the names of all candidates for city offices, printed in the same form as prescribed by the commission under s. 7.08 (1) (a). City election ballots may vary in form to conform to the law under which an election is held.

(am) No party designation shall appear on the official ballot for city offices.

(b) The city clerk or executive director of the city election commission shall arrange the official city ballot under s. 5.62 (4).

(4) SCHOOL DISTRICT. (a) There shall be a separate ballot for school district officers when so required, except as authorized in s. 5.655.

(b) In 1st class cities, the names of the candidates for the seat of the member elected at−large to the board of school directors shall be placed on the official city ballot and there shall be a separate ballot giving the names of the candidates for any seat to be filled on the board of school directors from any election district, except as authorized in s. 5.655. The names of candidates for the at−large seat shall be placed in the same column or row on the ballot.

(c) The arrangement of candidates for school board seats shall be determined by the school district clerk or the executive director of the city board of election commissioners by the drawing of lots not later than the 2nd Tuesday in January, or the next day if the first Tuesday is a holiday, if there is no primary, or not later than the 3rd day following the completion of the primary canvass if a primary is held. The method of determining arrangement shall be the same as provided in sub. (1) (b). Sufficient space shall be provided on the ballot for write−in candidates.

(4m) METROPOLITAN SEWERAGE COMMISSION. A separate ballot shall list the names of all candidates for metropolitan sewerage commission seats, if commissioners are elected under s. 200.09 (11) (am), except as authorized in s. 5.655. The names for the different seats shall be placed in separate columns or rows if more than one seat is contested at any election.

(5) VILLAGE. (ag) There shall be a separate ballot giving the names of all candidates for village offices, except as authorized in s. 5.655.

(ar) The offices to be filled shall be arranged on the official ballot in the order they are named in the statutes creating them. The names of the candidates shall be arranged by using the same method as that used by the commission under sub. (1) (b). Sufficient space shall be left under each office for write−in candidates.

(b) Only persons nominated under s. 8.05 shall be placed on the official ballots. If no nominations are made, the spaces for this office shall be left blank.

(6) TOWN. (a) Except as authorized in s. 5.655, there shall be a separate ballot giving the names of all candidates for elective town offices in the form prescribed by the commission under s. 7.08 (1) (a). There shall be 2 ballot forms. One ballot form shall be used for the election of supervisors to numbered seats and one ballot form shall be used for the election of supervisors to unnumbered seats. On the ballot used for the election of supervisors to unnumbered seats, all supervisor candidates shall be listed together and the voting instructions shall state "Vote for not more than.... [insert number of supervisors to be elected] candidates". All towns shall elect their supervisors to unnumbered seats unless the annual town meeting adopts a plan to elect supervisors to numbered seats. The names of candidates for town office shall be arranged by using the same method as that used by the commission under sub. (1) (b). A space shall be provided under each office on the ballot for a write−in candidate.

(b) Only the names of individuals nominated under s. 8.05 may be placed on the official ballot. If no nominations for an office are made, the space for that office shall be left blank.

(6m) TOWN SANITARY DISTRICT COMMISSION. Except as authorized in s. 5.655, a separate ballot shall list the names of all candidates for town sanitary district commission seats, if commissioners are elected under s. 60.74 and the boundaries of the district are not coterminous with the boundaries of one or more towns. The names for different seats shall be placed in separate columns or rows if more than one seat is contested at any election.

(7) REFERENDUM BALLOTS. Except as authorized in s. 5.655, there shall be a separate ballot setting forth all propositions requiring a vote in the form and manner provided by s. 5.64.

(8) BALLOTS FOR PRESIDENTIAL VOTE. (am) Except as authorized in s. 5.655, there shall be a separate ballot for each recognized political party filing a certification under s. 8.12 (1), listing the names of all potential candidates of that party determined under s. 8.12 and affording, in addition, an opportunity to the voter to nominate another potential candidate by write−in vote or to vote for an uninstructed delegation to the party convention. The order of presidential candidates on the ballot shall be determined by lot by or under the supervision of the commission. Each voter shall be given the ballots of all the parties participating in the presidential preference vote, but may vote on one ballot only.

(bm) Except as authorized in s. 5.655, a separate ballot shall be provided for use in each voting district.

(c) The official ballots for the presidential preference vote shall be securely fastened together at the bottom. The party receiving the greatest number of votes for governor at the preceding election shall have its ticket placed on top and the remaining party ballots shall follow in the same manner. A facsimile ballot notice shall be published as provided in s. 10.02.

History: 1971 c. 304 ss. 9 to 11, 29 (2); 1971 c. 336; 1973 c. 134; 1973 c. 334 s. 57; 1975 c. 93; 1977 c. 187, 427, 445, 449; 1979 c. 221, 260, 355; 1981 c. 377; 1983 a. 484; 1983 a. 532 s. 36; 1985 a. 29 s. 3202 (56); 1985 a. 89, 225; 1985 a. 304 ss. 28, 155; 1987 a. 391; 1989 a. 192, 290; 1993 a. 266; 1995 a. 16 s. 2; 1995 a. 201; 1999 a. 150 s. 672; 1999 a. 182; 2003 a. 24; 2005 a. 149; 2011 a. 45, 62; 2015 a. 118 ss. 65, 266 (10).

The national democratic party has a protected right of political association and may not be compelled to seat delegates chosen in an open primary in violation of the party's rules. Democratic Party of U.S. v. Wisconsin, 450 U.S. 107 (1981).

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

(b) 1. Except as provided in subd. 2. and s. 5.64 (1) (e) 2., every recognized political party listed on the official ballot at the last gubernatorial election whose candidate for any statewide office received at least 1 percent of the total votes cast for that office and, if the last general election was also a presidential election, every recognized political party listed on the ballot at that election whose candidate for president received at least 1 percent of the total vote cast for that office shall have a separate primary ballot or one or more separate columns or rows on the primary ballot as prescribed in par. (a) and a separate column on the general election ballot in every ward and election district. An organization which was listed as "independent" at the last general election and whose candidate meets the same qualification shall receive the same ballot status upon petition of the chairperson and secretary of the organization to the commission requesting such status and specifying their party name, which may not duplicate the name of an existing party. A petition under this subdivision may be filed no later than 5 p.m. on April 1 in the year of each general election.

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

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

one or more separate columns or rows on the ballot for the period ending with the following general election.

(b) Paragraph (a) applies to a party within any assembly district or county at any partisan primary election only if at least one candidate of the party for any national, state or county office qualifies to have his or her name appear on the ballot under the name of that party within that assembly district or county. The county clerk or county board of election commissioners shall provide a combined separate ballot or one or more separate columns or rows on the ballot that will permit an elector to cast a vote for a write−in candidate for the nomination of any such party for each national, state and county office whenever that party qualifies to be represented on a separate primary ballot or in one or more separate columns or rows under par. (a) but does not qualify under this paragraph. The ballot shall include the name of each party qualifying for a separate ballot or one or more separate columns or rows on the ballot under each office, with the names of the candidates for each such party appearing in the same order in which the ballots of the parties would appear under sub. (1) (a).

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

(4) (ag) The county clerk or county board of election commissioners shall designate the official primary ballot arrangement for all candidates filing nomination papers in that office.

(ar) Within a county the county clerk shall arrange the names of all candidates filing nomination papers with the clerk's office using the same method as that used by the commission under s. 5.60 (1) (b).

(b) The county board of election commissioners in counties having a population of more than 750,000 shall prepare the official primary ballot. The commissioners shall arrange the names of all candidates for each office whose nomination papers are filed at the county level, using the same method as that used by the elections commission under s. 5.60 (1) (b).

History: 1971 c. 304 ss. 12, 29 (2); 1971 c. 336; 1973 c. 334 s. 57; 1975 c. 93; 1977 c. 107, 427; 1979 c. 260, 311, 328; 1981 c. 377; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 31, 192; 1991 a. 316; 1993 a. 184; 1999 a. 182; 2005 a. 149; 2007 a. 1; 2011 a. 32, 75; 2013 a. 166 s. 77; 2013 a. 373; 2015 a. 118 ss. 66, 266 (10).

The filing of a proper petition by the requisite number of electors in a senate, assembly, or congressional district will qualify the political organization referred to in the petition as a party entitled to a separate ballot within the specific district only for all the state, congressional, legislative, and county offices for which an elector of that district may vote. The petition may be circulated commencing after any November general election and ending on the June 1 immediately prior to the next succeeding September primary. 61 Atty. Gen. 41.

5.64 General election ballots. At general elections all of the following ballots, when necessary, shall be provided for each ward:

(1) OFFICIAL BALLOT. (ag) Except as authorized in s. 5.655, there shall be a separate ballot giving the names of all candidates for president and vice president and for statewide, congressional, legislative, and county offices in the same form as prescribed by the commission under s. 7.08 (1) (a).

(ar) 1. The ballot shall permit an elector to do any of the following:

b. Vote for individual candidates for each office.

c. Vote for a person whose name does not appear on the ballot for any office.

1m. When voting for president and vice president, the ballot shall permit an elector to vote only for the candidates on one ticket jointly or to write in the names of persons in both spaces.

2. When voting for governor and lieutenant governor, the ballot shall permit an elector to vote only for the candidates on one ticket jointly or write in the names of persons in both spaces.

(b) The names of the candidates for the offices of president and vice president that are certified under s. 8.16 (7) or that are contained in nomination papers filed under s. 8.20 shall appear on the ballot in the form prescribed in s. 7.08 (2) (a). The names of the candidates on the regular party tickets nominated at the primary or replacements appointed under s. 8.35 (2) shall appear in a separate column under the party designation. The columns shall be arranged from left to right according to rank, based on the number of votes received by each party's candidate for president or governor at the last general election beginning with the party that received the most votes. To the right of the columns for parties qualifying under s. 5.62 (1) (b) shall be placed the columns for parties qualifying under s. 5.62 (2) in the same order in which the parties filed petitions with the commission. Any column required under par. (e) 2. shall be placed next in order. To the right of the party columns shall be a column for the names of independent candidates for each office, or more than one column if the first column does not provide sufficient space for the names of all such candidates.

(d) The offices shall be arranged beginning with president and vice president or governor and lieutenant governor, whenever these offices are filled, and then the remaining offices in the order designated under s. 5.62 (3).

(e) 1. Except as provided in subd. 2., each candidate's name shall be placed in the column of the party by which nominated or if independent, in a column designated independent and all candidates for the same office shall appear within the same rows on the ballot. If a separate column is provided to write in the names of any party candidates under subd. 2., the column shall appear before the column designated independent with the spaces provided to write in the names of the candidates for each such party appearing in the same order in which the columns of their parties would appear under par. (b). Along with the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers. Independent candidates for the same county office shall be listed in the same manner in an order drawn by lot by or under supervision of the county clerk or board of election commissioners.

2. There shall be a separate column for the candidates of each party qualifying for that column under s. 5.62 (1) (b) or (2), except that if, within any assembly district or county, there are no candidates for any national, state or county office representing such a party who qualify to have their names appear on the ballot under the name of that party within that assembly district, the county clerk or board of election commissioners shall provide a combined separate column that will permit an elector to cast a vote for a write−in candidate of any such party for each national, state and county office whenever that party qualifies to be represented in a separate column but does not qualify under this subdivision. The ballot shall include the name of each party qualifying for a separate column under each office, with the names of the candidates for each such party appearing in the same order in which the columns of the parties would appear under par. (b).

(eg) In the case of balloting for the offices of president and vice president, the names of the candidates shall be placed in the column of the party that nominated them or if independent, in a column designated independent. In each column there shall be one choice for the elector to cast a ballot jointly for both offices.

(em) The names of the candidates for the offices of president and vice president certified under s. 8.16 (7) or filed under s. 8.20 shall appear on the ballot in the form prescribed in s. 7.08 (2) (a). The names of the presidential electors for the candidates supplied under ss. 8.18 (2) and 8.20 (2) (d) are not listed on the ballot but

a vote for the candidates for president and vice president is a vote for them through their named presidential electors.

(es) The party candidates shall be arranged consecutively from top to bottom based on the number of votes received by their party's candidate for governor at the last election beginning with the party that received the most votes. The independent president−vice president candidates shall be listed together in an order drawn by lot by or under supervision of the commission, following under the party candidates. Along with the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers. Following under the independent candidates, a space shall be left for writing in the names of a candidate for president and vice president.

(f) In the case of balloting for the office of governor and lieutenant governor, the names of the candidates shall be placed in the party column by which nominated or if independent, in a column designated independent. In each column there shall be one choice for the elector to cast a ballot jointly for both offices.

(g) Following under the independent candidates for each office, a space shall be provided for the elector to write in the name of a candidate of his or her choice for that office.

(2) REFERENDUM BALLOT. (am) There shall be a separate ballot when any proposed constitutional amendment or any other measure or question is submitted to a vote of the people, except as authorized in s. 5.655. The ballot shall give a concise statement of each question in accordance with the act or resolution directing submission in the same form as prescribed by the commission under s. 7.08 (1) (a). The question may not be worded in such a manner as to require a negative vote to approve a proposition or an affirmative vote to disapprove a proposition. Unless otherwise expressly provided, this ballot form shall be used at all elections when questions are submitted to a vote of the people.

(c) The official referendum ballot prescribed under this subsection shall be utilized at every election, except that the format shall be altered to the extent provided or required by other laws establishing or authorizing referenda to be conducted. Except as authorized in s. 5.655, all referenda shall appear on a separate ballot, but more than one referendum question may appear on the same referendum ballot whenever the questions are numbered and all electors voting the ballot are entitled to vote upon all questions appearing thereon. When more than one state referendum is placed on the same ballot, the commission shall number the questions in chronological sequence. If the legislature submits questions on different dates, the commission shall number the questions sequentially based on the date on which the questions are submitted by the legislature. Except as authorized in s. 5.655, state and county referenda shall appear on a separate ballot from municipal or special district referenda. The form of all referendum ballots shall be substantially the same as that prescribed by the commission under s. 7.08 (1) (a).

History: 1971 c. 304 s. 29 (2); 1977 c. 26, 427; 1979 c. 260; 1981 c. 79, 175, 377, 391; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 31, 192; 1991 a. 316; 1999 a. 182; 2005 a. 149; 2011 a. 23, 115; 2015 a. 118 s. 266 (10).

5.65 Special referendum ballots. Unless otherwise provided, ballots for special referenda shall conform to the format prescribed under s. 5.64 (2), insofar as applicable.

History: 1983 a. 484; 1999 a. 182.

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

(2) Whenever a municipality employing paper ballots is required to utilize separate ballots for certain offices, referenda or parties at an election, the municipality may, with the approval of the county clerk or board of election commissioners of each county in which there is located any portion of the municipality where one or more electors reside, substitute a single consolidated paper ballot or a ballot that is designed to be utilized with an electronic voting system, if the ballot contains all of the applicable information required to be provided for paper ballots at that election.

(3) The commission shall prescribe notices and instructions to be given to electors who use a ballot that is authorized under sub. (2) in lieu of any notices and instructions that are applicable only to municipalities employing separate paper ballots.

History: 1999 a. 182; 2015 a. 118 s. 266 (10).

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

(2) The county clerk or board of election commissioners shall print a sufficient number of sample ballots. The municipal clerk or board of election commissioners shall print sample ballots whenever the municipality prepares ballots under s. 7.15 (2) (b) or (c). Sample ballots shall be printed on nonwhite colored paper and shall be overprinted "SAMPLE". Voting machine sample ballots shall be a reduced size diagram of the face of the board or screen inside the voting machine with all candidates, issues and voting instructions as they will appear on the official ballot. Sample ballots to be used with an electronic voting system in which ballots that are distributed to electors are used shall be an actual size copy of the ballot. The clerk or board of election commissioners printing the ballots shall distribute the samples approximately as follows: 45 percent shall be kept in the clerk's or board's office and distributed to electors requesting them; 45 percent shall be sent to the municipalities, or, if the municipality prints ballots, 45 percent shall be sent to the county for distribution to the electors; and 10 percent shall be reserved to be sent to the polling places by municipalities in proportion to the number certified in sub. (1) and made available to electors at the polls on election day.

History: 1979 c. 260, 311, 355; 1983 a. 484; 1987 a. 391; 2001 a. 16.

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

(2) Except as otherwise expressly provided, all costs for ballots, supplies, notices and any other materials necessary in preparing or conducting any election shall be paid for by the county or municipality whose clerk or board of election commissioners is responsible for providing them. If a ballot is prepared for a school, technical college, sewerage or sanitary district, the district shall pay for the cost of the ballot. If no other level of government is involved in a school, technical college, sewerage or sanitary district election, the district shall pay for all costs of the ballots, supplies, notices and other materials. If ballots, supplies, notices or other materials are used for elections within more than one unit of local government, the costs shall be proportionately divided between the units of local government involved in the election. In a 1st class city, all costs otherwise attributable to a school district shall be paid by the city.

(3) If voting machines are used or if an electronic voting system is used in which all candidates and referenda appear on the

same ballot, the ballots for all national, state and county offices and for county and state referenda shall be prepared and paid for by the county wherein they are used. If the voting machine or electronic voting system ballot includes a municipal or school, technical college, sewerage or sanitary district ballot, the cost of that portion of the ballot shall be reimbursed to the county or paid for by the municipality or district, except as provided in a 1st class city school district under sub. (2).

(4) The cost of compensation of election officials and trainees shall be borne in the manner provided in s. 7.03.

(5) If a charge is made for the use of a polling place, the charge shall be paid by the municipality establishing the polling place under s. 5.25 (2) unless the polling place is used to conduct a special election that is called by a unit of government other than the state or the municipality establishing the polling place and the special election is not held concurrently with an election specified in s. 5.02 (5), (12s), (21), or (22). In such case the charge shall be paid by the unit of government that calls the special election.

(6) The clerk of each county or municipality shall submit an invoice to the clerk of each municipality or district which is responsible for payment of election costs under this section. The municipality or district shall make payment to the county or municipal treasurer.

History: 1979 c. 260, 311, 355; 1985 a. 304; 1993 a. 399; 1999 a. 182; 2001 a. 16; 2005 a. 333, 451; 2011 a. 32; 2013 a. 165; 2015 a. 118.

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

(2) The commission shall review ballots and proof copies submitted under sub. (1) and shall notify the county and municipal clerk of any error as soon as possible but in no event later than 7 days after submission. The clerk is not required to correct a ballot error upon receipt of notice of the error, unless ordered to do so under sub. (3) or s. 5.06 (6).

(3) Whenever an affidavit is filed by the commission or any elector alleging an error or omission in the preparation of a ballot, the circuit court for the county where the ballot is proposed to be used or its presiding judge, by order, may summarily require a county or municipal clerk to correct the error, or show cause why it should not be corrected and, by order, after the hearing, have the correction made.

History: 1979 c. 260; 1979 c. 311 s. 19; 1979 c. 355 ss. 9, 10; Stats. 1979 s. 5.72; 1981 c. 377; 1983 a. 484; 2015 a. 118 s. 266 (10).

SUBCHAPTER III

ELECTRONIC VOTING SYSTEMS

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

History: 1979 c. 311; 1985 a. 304.
Cross−reference: See also ch. EL 7, Wis. adm. code.

5.77 Applicable procedures. (1) So far as applicable, the procedure provided for voting paper ballots applies when an electronic voting system employing the use of ballots distributed to electors is used.

(2) So far as applicable, the procedure provided for voting with mechanical voting machines applies when an electronic voting system employing the use of electronic voting machines is used.

History: 1979 c. 311.
Cross−reference: See also ch. EL 7, Wis. adm. code.

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

History: 1979 c. 311.

5.79 Instruction of electors. At polling places where an electronic voting system employing the use of ballots and voting devices is used, the election officials shall offer each elector instruction in the operation of the voting device and ballot before the elector enters the voting booth. No instructions may be given after the elector has entered the voting booth, except as authorized under s. 6.82 (2). All instructions shall be given by election officials in such a manner that they may be observed by other persons in the polling place.

History: 1979 c. 311; 2001 a. 16.

5.80 Demonstrator electronic voting system. When an electronic voting system is used in a forthcoming election, the municipal clerk may provide, for the purpose of instructing electors in the election, one or more demonstrator electronic voting systems using the names of fictitious candidates or fictitious questions for placement in any public building within the municipality in which the election occurs. If such placement of a demonstrator takes place it shall be made available at least 30 days before the election.

History: 1979 c. 311.

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

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

(4) In partisan primary elections, if a ballot contains the names of candidates of more than one party, it shall provide a space for electors to designate a party preference. Failure to designate a preference does not invalidate any votes cast by an elector, except as provided in s. 7.50 (1) (d).

History: 1979 c. 311; 1985 a. 304; 1999 a. 182; 2001 a. 16; 2011 a. 32.

5.82 Write−in ballots. If the ballot employed by a municipality does not provide a space for write−in votes, the municipality shall provide a separate write−in ballot, which may be in the form of a paper ballot, to permit electors to write in the names of persons

whose names are not on the ballot whenever write−in votes are authorized.

History: 1979 c. 311; 1987 a. 391; 2001 a. 16.

5.83 Preparation for use of voting devices; comparison of ballots. Where voting devices are used at a polling place, the municipal clerk shall cause the voting devices to be put in order, set, adjusted and made ready for voting when delivered to the polling place. Before the opening of the polls the inspectors shall compare the ballots used in the voting devices with the sample ballots furnished and see that the names, numbers and letters thereon agree and shall certify thereto on forms provided by the commission.

History: 1979 c. 311; 2015 a. 118 s. 266 (10).

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

(2) Before beginning the ballot count at each polling place or at the central counting location, the election officials shall witness a test of the automatic tabulating equipment by engaging the printing mechanism and securing a printed result showing a zero count for every candidate and referendum. After the completion of the count, the ballots and programs used shall be sealed and retained under the custody of the municipal clerk in a secure location.

History: 1979 c. 311; 2001 a. 16; 2005 a. 92.

5.85 Receiving, counting, tallying and return of ballots. (1) At any polling place at which an electronic voting system is utilized, the following procedures for receiving, counting, tallying and return of the ballots shall be used. Whenever paper ballots are utilized at a polling place in combination with ballots employed in an electronic voting system, the paper ballots shall be deposited in a separate ballot box or boxes, according to the types of ballots used. For the purpose of transporting the ballots or the record of the votes cast, the municipal clerk shall provide a secure container for each polling place. At each polling place, the applicable portions of the procedure prescribed for initiating the canvass under s. 7.51 (1) and (2) shall be performed, except that no count of the ballots, except write−in votes and paper ballots used for absentee voting and other purposes authorized by law, may be performed at a polling place if a central counting location is designated for the counting of ballots at that polling place by the municipality.

(2) (a) The election officials shall examine the ballots or record of votes cast for write−in votes and shall count and tabulate the write−in votes. The election officials shall count write−in votes as provided in s. 7.50 (2) (d). When an electronic voting system is used in which ballots are distributed to electors, before separating the remaining ballots from their respective covering envelopes, the election officials shall examine the ballots for write−in votes. When an elector has cast a write−in vote, the election officials shall compare the write−in vote with the votes on the ballot to determine whether the write−in vote results in an overvote for any office. In case of an overvote for any office, the election officials shall follow the procedure in par. (b).

(b) 1. In case of an overvote for any office, the election officials may either use the override function of the electronic voting system in order to eliminate the votes for the overvoted office, which shall be noted on the inspector's statement, or make a true duplicate ballot of all votes on the ballot except for the office that is overvoted in the manner described in this subdivision. If the election officials make a true duplicate ballot, they shall use an official ballot of that kind used by the elector who voted the original ballot, and one of the marking devices, so as to transfer all votes of the elector except for the office overvoted to an official ballot of that kind used in the ward at that election. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, whenever election officials of both of the 2 major political parties are present, the election officials acting under this subdivision shall consist in each case of at least one election official of each of the parties.

2. On any original ballot upon which there is an overvote and for which a duplicate ballot is made under subd. 1., the election officials shall, in the space on the ballot for official endorsement, identify the ballot as an "Overvoted Ballot" and write a serial number. On any duplicate ballot produced under subd. 1., the election officials shall, in the space on the ballot for official endorsement, identify the ballot as a "Duplicate Overvoted Ballot" and write a serial number. The election officials shall place the same serial number on each "Overvoted Ballot" and its corresponding "Duplicate Overvoted Ballot," commencing with number "1" and continuing consecutively for each of the ballots for which a "Duplicate Overvoted Ballot" is produced in that ward or election district. The election officials shall initial the "Duplicate Overvoted Ballot" ballots and shall place them in the container for return of the ballots. The "Overvoted Ballot" ballots and their envelopes shall be placed in the "Original Ballots" envelope.

(c) Ballots bearing write−in votes marked in the place designated for write−in votes, bearing the initials of an election official, not resulting in an overvote, and otherwise complying with the election laws as to marking shall be counted, tallied, and their votes recorded on a tally sheet provided by the municipal clerk. Ballots and ballot envelopes shall be separated and all ballots except any that are defective or overvoted shall be placed separately in the container for return of the ballots, along with the ballots marked "Duplicate Overvoted Ballots."

(3) The election officials shall examine the ballots to determine if any is damaged or defective so that it cannot be counted by the automatic tabulating equipment. If any ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, the election officials, in the presence of witnesses, shall make a true duplicate ballot of all votes on that ballot by using one of the marking devices so as to transfer all votes of the elector to an official ballot of that kind used by the elector who voted the original ballot in that election. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, whenever election officials of both of the 2 major political parties are present, the election officials acting under this subsection shall consist in each case of at least one official of each of the parties. On any damaged or defective original ballot, the election officials shall, in the space on the ballot for official endorsement, identify the ballot as a "Damaged Ballot" and write a serial number. On the duplicate ballot produced under this subsection, the election officials shall, in the space for official endorsement, identify the ballot as a "Duplicate Damaged Ballot" and write a serial number. The election officials shall place the same serial number on each "Damaged Ballot" and its corresponding "Duplicate Damaged Ballot," commencing with number "1" and continuing consecu-

tively for each of the ballots for which a "Duplicate Damaged Ballot" is produced in the ward or election district. The election officials shall initial the "Duplicate Damaged Ballot" ballots, and shall place them in the container for return of the ballots. The officials shall place "Damaged Ballot" ballots and their envelopes in the "Original Ballots" envelope.

(4) The original ballots shall be preserved with the duplicate ballots and delivered by the inspectors to the municipal clerk. The officials shall then make out a slip indicating the number of electors voting in person, number of absentee ballots deposited in the ballot box, and the total number of electors of each ward served by the polling place who voted at the election, which shall be signed by all the inspectors.

(5) If the municipality has designated a central counting location to be used to count ballots under s. 7.51 (1), the inspectors shall count and deposit the paper ballots in the container. The inspectors shall then place the slip made out under sub. (4) in the container. The inspectors shall also place the tally sheet recording the write−in votes and other votes cast on paper ballots, and all other ballots, or the record of the votes cast on an electronic voting system where no ballots are distributed to electors, in the container and shall thereupon immediately seal the container with an adhesive seal provided by the municipal clerk for the purpose in such manner that the seal completely covers the opening in the container, and each of the inspectors shall sign the seal. The "Defective Ballots" envelope, and "Original Ballots" envelope each shall be securely sealed and the flap or end thereof of each signed by the inspectors and returned to the central counting location with the box for return of the ballots, enclosed ballots and returns. Thereupon, the municipal clerk or 2 of the election officials shall forthwith and by the most direct route transport the container and envelopes to the central counting location designated by the municipal clerk. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, the election officials shall consist in each case of at least one election official of each of the 2 major political parties, whenever officials of both parties are present.

History: 1979 c. 311; 1989 a. 192; 1997 a. 127; 2001 a. 16; 2005 a. 149; 2013 a. 179; 2015 a. 261.

5.86 Proceedings at central counting locations. (1) All proceedings at each central counting location shall be under the direction of the municipal clerk or an election official designated by the clerk unless the central counting location is at the county seat and the municipal clerk delegates the responsibility to supervise the location to the county clerk, in which case the proceedings shall be under the direction of the county clerk or an election official designated by the county clerk. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, the employees at each central counting location, other than any specially trained technicians who are required for the operation of the automatic tabulating equipment, shall be equally divided between members of the 2 major political parties under s. 7.30 (2) (a) and all duties performed by the employees shall be by teams consisting of an equal number of members of each political party whenever sufficient persons from each party are available.

(2) At each central counting location, a team of election officials designated by the clerk or other election official having charge of the location under sub. (1) shall check the container returned containing the ballots to determine that all seals are intact, and thereupon shall open the container, check the inspectors' slip and compare the number of ballots so delivered against the total number of electors of each ward served by the polling place who voted, remove the ballots or record of the votes cast and deliver them to the technicians operating the automatic tabulating equipment. Any discrepancies between the number of ballots and total number of electors shall be noted on a sheet furnished for that purpose and signed by the election officials.

(3) Upon completion of the central count at a county seat, the county clerk shall return any ballots, statements, tally sheets, or envelopes relating solely to a municipal election to the appropriate municipal clerk and any ballots, statements, tally sheets, or envelopes relating solely to a school district election to the school district clerk. In addition, the county clerk shall report the results of the central count of votes for each office or referendum by ward or by combined wards authorized under s. 5.15 (6) (b) to the municipal clerk of the municipality where the votes are cast.

History: 1979 c. 311; 1985 a. 304; 1997 a. 127; 2001 a. 109; 2011 a. 115.

5.87 Tabulating votes. (1) If a central counting location is not utilized, the procedure for tabulating the votes by the automatic tabulating equipment shall be under the direction of the chief inspector and shall conform to the requirements of the automatic tabulating equipment. If any ballot is not accepted by the automatic tabulating equipment, the election officials shall make a duplicate ballot to replace that ballot in the manner prescribed in s. 5.85 (3). All proceedings at the polling place and at any central counting location shall be open to the public, but no person, except those employed and authorized for the purpose, may touch any ballot, container, envelope, return or equipment.

(2) The commission shall, by rule, prescribe uniform standards for determining the validity of votes cast or attempted to be cast with each electronic voting system approved for use in this state under s. 5.91. The rules shall apply only to situations that may arise in which the validity of a vote or attempted vote cast by an elector utilizing a particular system cannot be determined under s. 7.50.

History: 1979 c. 311; 1983 a. 484; 2003 a. 265; 2015 a. 118 s. 266 (10).

5.89 Official return. The return produced by the automatic tabulating equipment shall be appended to the tally sheet by the canvassers. The return constitutes a part of the official return for the ward or election district. The municipal clerk shall check the totals shown by the return and, if it appears that there is an obvious discrepancy with respect to the number of votes cast in any ward or election district, the clerk shall have the ballots for that ward or election district publicly retabulated to correct the return. Upon completion of the count, the return is open to the public.

History: 1979 c. 311.

5.90 Recounts. (1) Except as otherwise provided in this subchapter, recounts of votes cast on an electronic voting system shall be conducted in the manner prescribed in s. 9.01. Except as provided in this subsection, sub. (2), and s. 9.01 (1) (b) 8s., if the ballots are distributed to the electors, the board of canvassers shall recount the ballots with automatic tabulating equipment. The board of canvassers shall test the automatic tabulating equipment to be used prior to the recount as provided in s. 5.84, and then the official ballots or the record of the votes cast shall be recounted on the automatic tabulating equipment. In addition, the board of canvassers shall check the ballots for the presence or absence of the initials and other distinguishing marks, shall examine the ballots marked "Rejected", "Defective", "Overvoted", and "Objected to" to determine the propriety of such labels, and shall compare the "Duplicate Overvoted Ballots" and "Duplicate Damaged Ballots" with their respective originals to determine the correctness of the duplicates. Unless a court orders a recount to be conducted by another method under sub. (2), the board of canvassers may determine to conduct the recount of a specific election by hand and may determine to conduct the recount by hand for only certain wards or election districts. If electronic voting machines are used, the board of canvassers shall perform the recount using the permanent paper record of the votes cast by each elector, as generated by the machines.

(2) Any candidate, or any elector when for a referendum, may, by the close of business on the next business day after the last day for filing a petition for a recount under s. 9.01, petition the circuit court for an order requiring ballots under sub. (1) to be counted by hand or by another method approved by the court. The petitioner in such an action bears the burden of establishing by clear and convincing evidence that due to an irregularity, defect, or mistake

committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election.

(3) A court with whom a petition under sub. (2) is filed shall hear the matter as expeditiously as possible, without a jury. The court may order a recount of the ballots by hand or another method only if it determines that the petitioner has established by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election. Nothing in this section affects the right of a candidate or elector aggrieved by the recount to appeal to circuit court under s. 9.01 (6) upon completion of the recount.

History: 1979 c. 311; 1987 a. 391; 2005 a. 92, 451; 2007 a. 96; 2013 a. 176; 2015 a. 261.

Cross−reference: See also ch. EL 7, Wis. adm. code.

5.905 Software components. (1) In this section, "software component" includes vote−counting source code, table structures, modules, program narratives and other human−readable computer instructions used to count votes with an electronic voting system.

(2) The commission shall determine which software components of an electronic voting system it considers to be necessary to enable review and verification of the accuracy of the automatic tabulating equipment used to record and tally the votes cast with the system. The commission shall require each vendor of an electronic voting system that is approved under s. 5.91 to place those software components in escrow with the commission within 90 days of the date of approval of the system and within 10 days of the date of any subsequent change in the components. The commission shall secure and maintain those software components in strict confidence except as authorized in this section. Unless authorized under this section, the commission shall withhold access to those software components from any person who requests access under s. 19.35 (1).

(3) The commission shall promulgate rules to ensure the security, review and verification of software components used with each electronic voting system approved by the commission. The verification procedure shall include a determination that the software components correspond to the instructions actually used by the system to count votes.

(4) If a valid petition for a recount is filed under s. 9.01 in an election at which an electronic voting system was used to record and tally the votes cast, each party to the recount may designate one or more persons who are authorized to receive access to the software components that were used to record and tally the votes in the election. The commission shall grant access to the software components to each designated person if, before receiving access, the person enters into a written agreement with the commission that obligates the person to exercise the highest degree of reasonable care to maintain the confidentially of all proprietary information to which the person is provided access, unless otherwise permitted in a contract entered into under sub. (5).

(5) A county or municipality may contract with the vendor of an electronic voting system to permit a greater degree of access to software components used with the system than is required under sub. (4).

History: 2005 a. 92; 2015 a. 118 s. 266 (10).

5.91 Requisites for approval of ballots, devices and equipment. No ballot, voting device, automatic tabulating equipment, or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is certified by the commission. The commission may revoke its certification of any ballot, device, equipment, or materials at any time for cause. The commission may certify any such voting device, automatic tabulating equipment, or related equipment or materials regardless of whether any such item is approved by the federal election assistance commission, but the commission may not certify any ballot, device, equipment, or material to be used in an electronic voting system unless it fulfills the following requirements:

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

(3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.

(4) It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write−in votes are permitted.

(5) It accommodates all referenda to be submitted to the electors in the form provided by law.

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

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

(8) It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.

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

(10) It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.

(11) It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.

(12) It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.

(13) The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.

(14) It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.

(15) It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

(16) It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.

(17) Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.

(18) If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

History: 1979 c. 311; 1983 a. 484; 1985 a. 304; 2001 a. 16; 2003 a. 265; 2005 a. 92; 2011 a. 23, 32; 2015 a. 118 s. 266 (10); 2015 a. 261; s. 35.17 correction in (intro.).
Cross−reference: See also ch. EL 7, Wis. adm. code.

5.92 Bond may be required. Before entering into a contract for the purchase or lease of an electronic voting system or any ballots, voting devices, automatic tabulating equipment or related equipment or materials to be used in connection with a system, any municipality may require the vendor or lessor to provide a performance bond with a licensed surety company as surety, guaranteeing the supply of additional equipment, parts or materials, provision of adequate computer programming, preventive maintenance or emergency repair services, training of election officials and other municipal employees or provision of public educational materials for a specified period, or guaranteeing the security of the computer programs or other equipment or materials to be utilized with the system to prevent election fraud, or such other guarantees as the municipality determines to be appropriate.

History: 1979 c. 311.
Cross−reference: See also ch. EL 7, Wis. adm. code.

5.93 Administration. The commission shall promulgate reasonable rules for the administration of this subchapter.

History: 1979 c. 311; 1985 a. 332 s. 251 (1); 2015 a. 118.
Cross−reference: See also ch. EL 7, Wis. adm. code.

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

History: 1979 c. 311; 2001 a. 16.

5.95 Elector information. The commission shall prescribe information to electors in municipalities and counties using various types of electronic voting systems to be published in lieu of the information specified in s. 10.02 (3) in type B notices whenever the type B notice information is inapplicable.

History: 1979 c. 311; 2015 a. 118 s. 266 (10).