



2019 SENATE BILL 240

May 24, 2019 - Introduced by Senators BERNIER, MILLER, SMITH, BEWLEY and SCHACHTNER, cosponsored by Representatives TUSLER, ZAMARRIPA, SPREITZER, ANDERSON, KRUG, LOUDENBECK, MACCO, MURSAU, RAMTHUN, VRUWINK and SUBECK. Referred to Committee on Elections, Ethics and Rural Issues.

1 **AN ACT** *to repeal* 5.06 (10); *to renumber and amend* 5.06 (1); *to amend* 5.06
2 (4), 5.06 (7), 5.15 (4) (a), 5.60 (3) (ag), 5.62 (1) (a), 5.94, 6.45 (1), 6.46 (2), 6.47 (1)
3 (ag), 6.47 (1) (dm), 7.08 (10), 7.23 (1) (e), 7.50 (2) (em), 7.52 (1) (b), 7.60 (5) (a),
4 9.01 (2), 10.01 (1), 10.06 (2) (d), 10.06 (2) (f), 10.06 (2) (j), 10.06 (2) (L), 10.06 (3)
5 (as), 10.06 (3) (b), 10.06 (3) (c) and 10.06 (3) (d); and *to create* 5.06 (1) (b) and
6 9.10 (2) (e) 9. of the statutes; **relating to:** elections administration, recall
7 petitions, and recount procedures.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the state's election laws, including the following:

1. Under current law, the Elections Commission is authorized to review the conduct of election officials for violations of law and abuse of discretion. Current law provides that the commission may, after investigation, issue an order requiring an election official to conform his or her conduct to the law, restraining an election official from taking an action inconsistent with the law, or requiring an election official to correct an action or decision inconsistent with the law.

This bill authorizes the commission to issue such other temporary orders of limited effect as it deems necessary to carry out its powers and duties in reviewing the conduct of election officials.

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2. Under current law, only courts are authorized to review matters concerning recounts. This bill does not affect that authority but additionally authorizes the commission to review the decision or other conduct of an election official with respect to matters concerning a recount in order to determine whether the official's decision or other conduct is contrary to law or constitutes an abuse of discretion. That authority mirrors the commission's authority with respect to other matters arising in the course of elections. Under the bill, the commission may not review a final recount determination that is ripe for appeal in court.

3. This bill alters the methods of delivery of a recount petition to candidates in an election. Under current law, a petition for a recount for an elected office must be filed with the clerk or body with whom nomination papers are filed for that office. The clerk or body is required to deliver the petition to each opposing candidate or the candidate's designated agent. The candidate or agent must acknowledge personal delivery of the petition by signing a receipt. If a candidate or agent does not personally accept delivery of the petition, the clerk or body must promptly deliver the copies of the petition to the sheriff, who must then deliver the copies of the petition to each candidate at the address given on the candidate's nomination papers in the manner provided for service of a summons in civil actions.

This bill adds the following steps to this process:

a. If a candidate or agent does not personally accept delivery of the petition, the clerk or body is required to attempt to notify the candidate or agent of the petition by e-mail and by telephone and, upon receiving acknowledgment from the candidate or agent, retain documentation of that notice.

b. If the clerk or body does not receive acknowledgment by e-mail or by telephone, the clerk or body must deliver copies of the petition to the sheriff for service as described above. However, if the sheriff does not serve a copy of the petition within 24 hours, the clerk or body must publish or post notice of the petition, which must occur at least 24 hours before the start of the recount.

4. Under current law, the commission is required to provide information on a continuing basis to all municipal clerks concerning the names and addresses of domestic abuse and sexual assault service providers. Under this bill, the commission is required to provide that information only as needed to verify the voting eligibility of a voter whose identity must be kept confidential because the voter is the victim of domestic abuse, sexual assault, or stalking.

5. Under this bill, an individual's signature on a recall petition may not be counted unless, among the other requirements provided under current law, the signer legibly prints his or her name in a space provided next to his or her signature.

6. This bill requires county clerks to publish a type A notice of a referendum prior to a partisan primary or spring primary if a referendum will appear on the ballot at the spring or partisan primary. Under current law, a type A notice of a referendum must contain the text of the ballot question and a statement specifying where a copy of the resolution directing submission of the question may be obtained.

7. This bill requires municipal clerks to publish certain notices, required under current law for spring and general elections, prior to a partisan primary or spring

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primary when a referendum will appear on the ballot at the spring or partisan primary.

8. Under current law, each county clerk is required to deliver or transmit to the commission a certified copy of each statement of a county board of canvassers regarding an election within certain specified time periods after primaries and all other elections. This bill specifies that the certified copies must be delivered or transmitted to the commission in a manner prescribed by the commission.

9. Current law allows a municipality to appoint additional election inspectors for the canvassing of absentee ballots by the municipal board of absentee ballot canvassers. Under current law, an inspector so appointed must be a qualified elector of the municipality. This bill provides that if the municipality cannot identify a sufficient number of qualified electors of the municipality to serve as inspectors, the municipality may appoint qualified electors of the county in which the municipality is located to serve as inspectors.

10. Current law requires that spring election ballots for town, village, and school district offices include sufficient space for write-in candidates. This bill requires that spring election ballots for city offices also include sufficient space for write-in candidates.

11. This bill eliminates the requirement that a partisan primary ballot list the names of independent candidates for state office. Prior to July 1, 2011, listing the names of independent candidates for state office on the partisan primary ballot was necessary for determining eligibility for providing public financing for such candidates. Current law no longer provides public financing for campaigns for state office.

12. Under current law, a poll list created for an election must be maintained for 22 months after the election. This bill provides that an original electronic poll list need not be maintained if a true copy is maintained for the 22-month period.

13. Under current law, when a municipality uses an electronic voting system for an election, the clerks of the county and municipality where the system is used must provide notice of the ballot form and contents by arranging for the publication of an actual size copy of the ballot. Current law, however, allows a publisher to reduce the size of the facsimile ballot for publication purposes. This bill eliminates the inconsistency between these two provisions by eliminating the requirement that the clerks arrange for publication of an actual size copy of the ballot.

14. This bill specifies that a municipal clerk need not make paper copies of a registration list for use in an election if an electronic registration list is used.

15. Under current law, a municipal clerk is required upon request to provide a candidate one copy of the current poll list for those areas for which he or she is a candidate. Current law specifies that if a copying machine is unavailable, the clerk is required to remove the lists from the office to make copies and return the lists immediately thereafter. This bill removes any reference to a copying machine.

16. Under current law, one of the circumstances under which all write-in votes must be counted for a particular office in an election occurs if a candidate certified to appear on the ballot dies or withdraws before the election. Under this bill, all

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write-in votes must be counted under that circumstance only if a candidate certified to appear on the ballot dies before the election.

17. Under current law, the commission is required to make rules and draft whatever forms it considers necessary to standardize the form of various election notices. This bill eliminates the requirement to make such rules but not the requirement to draft standardized forms.

18. The bill provides that, for the purpose of creating wards, no ward line may cross the boundary of a congressional, assembly, or supervisory district.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 5.06 (1) of the statutes is renumbered 5.06 (1) (a) and amended to
2 read:

3 5.06 (1) (a) ~~Whenever any elector of a jurisdiction or district served by an~~
4 ~~election official~~ person authorized under par. (b) to file a complaint believes that a
5 decision or action of ~~the~~ an election official or the failure of the official to act with
6 respect to any matter concerning nominations, qualifications of candidates, voting
7 qualifications, including residence, ward division and numbering, recall, ballot
8 preparation, election administration ~~or~~, conduct of elections, or, subject to par. (b) 2.,
9 conduct of a recount, is contrary to law, or the official has abused the discretion vested
10 in him or her by law with respect to any such matter, the ~~elector~~ authorized person
11 may file a written sworn complaint with the commission requesting that the official
12 be required to conform his or her conduct to the law, be restrained from taking any
13 action inconsistent with the law, or be required to correct any action or decision
14 inconsistent with the law or any abuse of the discretion vested in him or her by law.
15 The complaint shall set forth such facts as are within the knowledge of the
16 complainant to show probable cause to believe that a violation of law or abuse of
17 discretion has occurred or will occur. The complaint may be accompanied by relevant

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

4 **SECTION 2.** 5.06 (1) (b) of the statutes is created to read:

5 5.06 (1) (b) The following persons are authorized to file a complaint under this
6 subsection:

7 1. An elector of a jurisdiction or district served by an election official who is a
8 subject of the complaint.

9 2. A candidate voted for at an election who is an aggrieved party, as determined
10 under s. 9.01 (1) (a) 5., or an elector who voted upon a referendum question at an
11 election, with respect to a recount under s. 9.01, except that a recount determination
12 that is ripe for appeal under s. 9.01 (6) is not reviewable under this subsection.

13 **SECTION 3.** 5.06 (4) of the statutes is amended to read:

14 5.06 (4) The commission may, on its own motion, investigate and determine
15 whether any election official, with respect to any matter ~~concerning nominations,~~
16 ~~qualifications of candidates, voting qualifications, including residence, ward~~
17 ~~division and numbering, recall, ballot preparation, election administration or~~
18 ~~conduct of elections~~ specified in sub. (1), has failed to comply with the law or abused
19 the discretion vested in him or her by law or proposes to do so.

20 **SECTION 4.** 5.06 (7) of the statutes is amended to read:

21 5.06 (7) The commission may withdraw, modify or correct an order issued
22 under sub. (6) within a timely period if it finds such action to be appropriate. The
23 commission may issue such other temporary orders of limited effect as it deems
24 necessary to carry out its powers and duties under this section.

25 **SECTION 5.** 5.06 (10) of the statutes is repealed.

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1 **SECTION 6.** 5.15 (4) (a) of the statutes is amended to read:

2 5.15 (4) (a) Except as provided in par. (c), the division ordinance or resolution
3 shall number all wards in the municipality with unique whole numbers in
4 consecutive order, beginning with the number one, shall designate the polling place
5 for each ward, and shall describe the boundaries of each ward consistent with the
6 conventions set forth in s. 4.003. No ward line may cross the boundary of a
7 congressional, assembly, or supervisory district. The ordinance or resolution shall
8 be accompanied by a list of the block numbers used by the U.S. bureau of the census
9 that are wholly or partly contained within each ward, with any block numbers partly
10 contained within a ward identified, and a map of the municipality which illustrates
11 the revised ward boundaries. If the legislature, in an act redistricting legislative
12 districts under article IV, section 3, of the constitution, or in redistricting
13 congressional districts, establishes a district boundary within a municipality that
14 does not coincide with the boundary of a ward established under the ordinance or
15 resolution of the municipality, the municipal governing body shall, no later than
16 April 10 of the 2nd year following the year of the federal decennial census on which
17 the act is based, amend the ordinance or resolution to the extent required to effect
18 the act. The amended ordinance or resolution shall designate the polling place for
19 any ward that is created to effect the legislative act. Nothing in this paragraph shall
20 be construed to compel a county or city to alter or redraw supervisory or aldermanic
21 districts.

22 **SECTION 7.** 5.60 (3) (ag) of the statutes is amended to read:

23 5.60 (3) (ag) Except as authorized in s. 5.655, there shall be a separate ballot
24 giving the names of all candidates for city offices, printed in the same form as
25 prescribed by the commission under s. 7.08 (1) (a). Sufficient space shall be provided

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1 on the ballot for write-in candidates. City election ballots may vary in form to
2 conform to the law under which an election is held.

3 **SECTION 8.** 5.62 (1) (a) of the statutes is amended to read:

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

21 **SECTION 9.** 5.94 of the statutes is amended to read:

22 **5.94 Sample ballots; publication.** When an electronic voting system
23 employing a ballot that is distributed to electors is used, the county and municipal
24 clerk of the county and municipality in which the polling place designated for use of
25 the system is located shall cause to be published, in the type B notices, a true

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1 actual-size copy of the ballot containing the names of offices and candidates and
2 statements of measures to be voted on, as nearly as possible, in the form in which they
3 will appear on the official ballot on election day. The notice may be published as a
4 newspaper insert. Municipal clerks may post the notice if the remainder of the type
5 B notice is posted.

6 **SECTION 10.** 6.45 (1) of the statutes is amended to read:

7 6.45 (1) After the deadline for revision of the registration list, the municipal
8 clerk shall make copies of the list for election use. Paper copies need not be made if
9 an electronic registration list is used.

10 **SECTION 11.** 6.46 (2) of the statutes is amended to read:

11 6.46 (2) Poll lists shall be open to public inspection, except as provided in s.
12 6.47. The municipal clerk shall furnish upon request to each candidate who has filed
13 nomination papers for an office ~~which~~ that represents at least part of the
14 municipality one copy of the current poll list for those areas for which he or she is a
15 candidate for a fee not to exceed the cost of reproduction. ~~If a copying machine is not~~
16 ~~accessible, the clerk shall~~ must remove the lists from the office for the purposes of
17 copying, ~~and the clerk shall~~ return them immediately thereafter. The clerk shall
18 exclude information that is confidential under s. 6.47 (2) from copies of the list, except
19 as authorized under s. 6.47 (8).

20 **SECTION 12.** 6.47 (1) (ag) of the statutes is amended to read:

21 6.47 (1) (ag) “Domestic abuse victim service provider” means an organization
22 that is certified by the department of children and families as eligible to receive
23 grants under s. 49.165 (2) ~~and whose name is included on the list provided by the~~
24 ~~commission under s. 7.08 (10).~~

25 **SECTION 13.** 6.47 (1) (dm) of the statutes is amended to read:

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1 6.47 (1) (dm) “Sexual assault victim service provider” means an organization
2 that is certified by the department of justice as eligible to receive grants under s.
3 165.93 (2) ~~and whose name is included on the list provided by the commission under~~
4 ~~s. 7.08 (10).~~

5 **SECTION 14.** 7.08 (10) of the statutes is amended to read:

6 7.08 (10) DOMESTIC ABUSE AND SEXUAL ASSAULT SERVICE PROVIDERS. Provide to
7 each municipal clerk, ~~on a continuous basis~~ as needed to confirm the eligibility to vote
8 of electors who have obtained a confidential listing under s. 6.47 (2), the names and
9 addresses of organizations that are certified under s. 49.165 (4) (a) or 165.93 (4) (a)
10 to provide services to victims of domestic abuse or sexual assault.

11 **SECTION 15.** 7.23 (1) (e) of the statutes is amended to read:

12 7.23 (1) (e) Poll lists created for any election may be destroyed 22 months after
13 the election at which they were created. An original electronic poll list need not be
14 maintained under this paragraph if a true copy of the electronic poll list is
15 maintained whether in hard copy or electronic format.

16 **SECTION 16.** 7.50 (2) (em) of the statutes is amended to read:

17 7.50 (2) (em) Except as otherwise provided in this paragraph, write-in votes
18 shall only be counted if no candidates have been certified to appear on the ballot. If
19 a candidate has been certified to appear on the ballot, write-in votes may only be
20 counted for a candidate that files a registration statement under s. 11.0202 (1) (a) no
21 later than noon on the Friday immediately preceding the election. If a candidate
22 certified to appear on the ballot ~~dies or withdraws~~ before the election, all write-in
23 votes shall be counted. When write-in votes are counted, every vote shall be counted
24 for the candidate for whom it was intended, if the elector’s intent can be ascertained
25 from the ballot itself.

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1 **SECTION 17.** 7.52 (1) (b) of the statutes is amended to read:

2 7.52 (1) (b) A municipality that adopts the canvassing procedure under this
3 section may appoint additional inspectors under s. 7.30 (2) (a) to assist the absentee
4 ballot board of canvassers in canvassing absentee ballots under this section. In such
5 case, an odd number of inspectors shall be appointed, and at no time may there be
6 less than 3 inspectors who serve. Except as authorized in s. 7.30 (4) (c), all inspectors
7 shall be affiliated with one of the 2 recognized political parties receiving the largest
8 numbers of votes for president, or for governor in nonpresidential general election
9 years, in the municipality. The party whose candidate received the largest number
10 of votes in the municipality is entitled to one more inspector than the party whose
11 candidate received the next largest number of votes in the municipality. Each
12 inspector so appointed shall be a qualified elector of the municipality, except that if
13 the municipality cannot identify a sufficient number of qualified electors of the
14 municipality to serve as inspectors, the municipality may appoint qualified electors
15 of the county in which the municipality is located to serve as inspectors. The
16 inspectors who are appointed under this paragraph shall serve under the direction
17 and supervision of the board of absentee ballot canvassers.

18 **SECTION 18.** 7.60 (5) (a) of the statutes is amended to read:

19 7.60 (5) (a) Immediately following the canvass, the county clerk shall deliver
20 or transmit to the elections commission in a manner prescribed by the commission
21 a certified copy of each statement of the county board of canvassers for president and
22 vice president, state officials, senators and representatives in congress, state
23 legislators, justice, court of appeals judge, circuit judge, district attorney, and
24 metropolitan sewerage commissioners, if the commissioners are elected under s.
25 200.09 (11) (am). The statement shall record the returns for each office or

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1 referendum by ward, unless combined returns are authorized under s. 5.15 (6) (b) in
2 which case the statement shall record the returns for each group of combined wards.
3 Following primaries the county clerk shall enclose on forms prescribed by the
4 elections commission the names, party or principle designation, if any, and number
5 of votes received by each candidate recorded in the same manner. The county clerk
6 shall deliver or transmit the certified statement to the elections commission no later
7 than 9 days after each primary except the partisan primary, no later than 10 days
8 after the partisan primary and any other election except the general election, and no
9 later than 14 days after the general election. The board of canvassers shall deliver
10 or transmit a certified copy of each statement for any technical college district
11 referendum to the secretary of the technical college district board.

12 **SECTION 19.** 9.01 (2) of the statutes is amended to read:

13 9.01 (2) NOTICE TO CANDIDATES. When the recount concerns an election for an
14 office, the clerk or body with whom the petition is filed shall promptly prepare a copy
15 of the petition for delivery to each opposing candidate for the same office whose name
16 appears on the ballot. In a recount proceeding for a partisan primary, the clerk or
17 body shall prepare a copy of the petition for delivery to each opposing candidate for
18 the same party nomination for the same office, to each opposing candidate for the
19 party nomination of each other party for the same office and to each independent
20 candidate qualifying to have his or her name placed on the ballot for the succeeding
21 election. A candidate or agent designated by a candidate may personally accept
22 delivery of a copy of the petition. Upon such delivery, the clerk or body shall require
23 the candidate or agent to sign a receipt therefor acknowledging delivery of the
24 petition. If a candidate or agent does not personally accept delivery, the clerk or body
25 shall then attempt to notify the candidate or agent of the petition by electronic mail

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1 and by telephone and, upon receiving acknowledgment from the candidate or agent,
2 retain documentation of that notice. If the clerk or body does not receive
3 acknowledgment by electronic mail or by telephone, the clerk or body shall promptly
4 deliver the copies of the petition to the sheriff, who shall promptly deliver the copies
5 of the petition to each candidate at the address given on the candidate's nomination
6 papers, without fee, in the manner provided for service of a summons in civil actions.
7 If the sheriff does not complete service of a copy of the petition to a candidate within
8 24 hours after having received the copy from the clerk or body, the clerk or body shall
9 publish or post notice of the petition. If the clerk or body is required to publish or post
10 notice of the petition, the clerk or body shall do so at least 24 hours before the start
11 of the recount.

12 **SECTION 20.** 9.10 (2) (e) 9. of the statutes is created to read:

13 9.10 (2) (e) 9. The signer has not legibly printed his or her name in a space
14 provided next to his or her signature.

15 **SECTION 21.** 10.01 (1) of the statutes is amended to read:

16 10.01 (1) The form of the various election notices shall be prescribed by the
17 commission to standardize election notices. To accomplish this purpose, the
18 commission shall ~~make rules and~~ draft whatever forms it considers necessary.
19 Notification or certification lists of candidates or referenda questions sent to the
20 county clerks shall prescribe the form in which the county clerks shall publish the
21 relevant portions of the notice and any additional county offices and referenda
22 questions. The commission shall also prescribe the provisions for municipal notices
23 which shall be sent to each county clerk who shall immediately forward them to each
24 municipal clerk.

25 **SECTION 22.** 10.06 (2) (d) of the statutes is amended to read:

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1 10.06 (2) (d) On the Monday preceding the spring primary, when held, the
2 county clerk shall publish a type B notice and, if applicable, a type C notice.

3 **SECTION 23.** 10.06 (2) (f) of the statutes is amended to read:

4 10.06 (2) (f) On the 4th Tuesday preceding the each spring primary and
5 election, the county clerk shall publish a type A notice of any state or county
6 referendum to be held at the primary or election.

7 **SECTION 24.** 10.06 (2) (j) of the statutes is amended to read:

8 10.06 (2) (j) On the Monday preceding the partisan primary the county clerk
9 shall publish a type B notice and, if applicable, a type C notice.

10 **SECTION 25.** 10.06 (2) (L) of the statutes is amended to read:

11 10.06 (2) (L) On the 4th Tuesday preceding the each partisan primary and
12 general election, the county clerk shall publish a type A notice of any state or county
13 referendum to be held at the primary or election.

14 **SECTION 26.** 10.06 (3) (as) of the statutes is amended to read:

15 10.06 (3) (as) On the 4th Tuesday preceding the spring primary, when held, the
16 municipal clerk shall publish a type E notice. In cities and villages, the municipal
17 clerk shall publish a type A notice on the 4th Tuesday preceding the spring primary
18 of any ~~direct legislation questions~~ referendum to be voted on held at the primary.

19 **SECTION 27.** 10.06 (3) (b) of the statutes is amended to read:

20 10.06 (3) (b) If there is to be a municipal primary, the municipal clerk shall
21 publish a type B notice on the Monday before the primary election. In cities and
22 villages, the municipal clerk shall publish a type C notice on the Monday before the
23 primary election of any ~~direct legislation questions~~ referendum to be voted on held
24 at the primary.

25 **SECTION 28.** 10.06 (3) (c) of the statutes is amended to read:

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1 10.06 (3) (c) On the Monday before the each spring primary and election, the
2 municipal clerk shall publish a type B notice and a type D notice. If there are
3 municipal referenda, the municipal clerk shall publish a type C notice at the same
4 time.

5 **SECTION 29.** 10.06 (3) (d) of the statutes is amended to read:

6 10.06 (3) (d) On the Monday preceding the each partisan primary and general
7 election, the municipal clerk shall publish a type D notice. If there are municipal
8 referenda, the municipal clerk shall publish type B and C notices at the same time.

9 **SECTION 30. Initial applicability.**

10 (1) RECALL PETITIONS. The treatment of s. 9.10 (2) (e) 9. first applies to a recall
11 petition filed on the effective date of this subsection.

12

(END)