



2023 ASSEMBLY BILL 563

October 26, 2023 - Introduced by Representatives TUSLER, KURTZ, RIEMER, ANDRACA, DRAKE, JOERS, S. JOHNSON, KITCHENS, MURSAU, NOVAK, DONOVAN, DOYLE, SHANKLAND, STEFFEN, SUBECK, ZIMMERMAN, J. ANDERSON and CLANCY, cosponsored by Senators JAMES, SMITH, COWLES and SPREITZER. Referred to Committee on Campaigns and Elections.

AN ACT *to renumber and amend* 7.60 (4) (c) and 8.16 (1); *to amend* 5.01 (3)

(a), 5.35 (6) (b), 5.62 (1) (a), 5.62 (1) (b) 2., 5.62 (2) (b), 5.62 (3), 5.81 (4), 5.84 (1), 5.91 (1), 5.91 (6), 6.80 (2) (am), 7.10 (2), 7.50 (1) (b), 7.50 (1) (c), 7.50 (1) (d), 7.60 (4) (a), 8.50 (3) (b), 8.50 (3) (c) and 10.02 (3) (b) 2.; and **to create** 5.20, 5.62 (3m), 6.80 (2) (g), 7.60 (4) (c) 3., 7.60 (4) (c) 4., 7.62 and 8.16 (1) (b) of the statutes; **relating to:** top-five primaries and instant runoff voting for the offices of U.S. senator and U.S. representative in Congress.

Analysis by the Legislative Reference Bureau

TOP-FIVE PRIMARIES FOR CERTAIN NATIONAL OFFICES

Under current law, electors voting in a partisan primary may select the party whose candidates they wish to vote for and may cast votes for candidates only within that political party. The single candidate who receives the greatest number of votes for each office within each party is nominated to appear on the general election ballot. Independent candidates and candidates of minor parties that do not qualify for a separate party ballot, column, or row do not appear on the partisan primary ballot.

ASSEMBLY BILL 563**SECTION 1**

This bill provides that electors may vote in the primary for U.S. senator and representative in Congress for any candidate regardless of party affiliation, and the five persons who receive the greatest numbers of votes for each such office are nominated to appear on the general election ballot. Under the bill, independent candidates for such offices and candidates of minor parties appear on the top-five primary ballot, and electors may vote for these candidates in the same manner as other candidates.

**INSTANT RUNOFF VOTING FOR CERTAIN NATIONAL OFFICES IN GENERAL
ELECTIONS**

The bill requires instant runoff voting at the general election for U.S. senator and representative in Congress. Under instant runoff voting, voters use a ranked-choice ballot and have the option to cast their vote for each office in order of preference. If a voter ranks more than one candidate for an office, the voter must indicate a preference between the candidates by designating one as “first choice,” another as “second choice,” and subsequent choices in sequential preference. A voter may also indicate as one of their preferences a write-in candidate for any office.

Under the bill an instant runoff is used to determine the candidate elected. All votes are tallied and the candidate with fewest first-choice preferences is eliminated. A voter who has chosen that candidate has his or her single vote transferred to the voter’s second-choice preference. The votes are tallied again and this process continues until there are two remaining candidates. At that point, the candidate with a majority of the combined first-choice and reallocated preferences wins.

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:

SECTION 1. 5.01 (3) (a) of the statutes is amended to read:

5.01 (3) (a) Except as provided in par. (b) and s. 5.20, 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.

SECTION 2. 5.20 of the statutes is created to read:

5.20 Instant runoff voting. (1) In this section, “instant runoff voting”

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means a voting method in which the electors voting at the general election for U.S. senator or representative in Congress use a ranked-choice ballot that permits them to indicate and order their preferences for all candidates whose names appear on the ballot for the office of U.S. senator or representative in Congress as provided under sub. (3).

(2) For any election using instant runoff voting, an elector may indicate his or her preferences for up to 5 candidates for the office of U.S. senator or representative in Congress using a ranked-choice ballot under sub. (3). An elector may indicate a preference for a write-in candidate on a ranked-choice ballot. An elector is not required to indicate a preference for more than one candidate.

(3) All of the following apply to a ranked-choice ballot:

(a) The ballot shall allow electors to rank candidates for the office of U.S. senator or representative in Congress in order of preference, including a write-in candidate for each race.

(b) The ballot shall allow electors to rank up to 5 candidates for the office of U.S. senator or representative in Congress.

(c) The ballot shall not interfere with an elector's ability to rank a write-in candidate for the office of U.S. senator or representative in Congress, but a vote for a write-in candidate for either office may only be counted as provided under s. 7.50 (2) (em).

SECTION 3. 5.35 (6) (b) of the statutes is amended to read:

5.35 (6) (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

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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, other than candidates for the offices of U.S. senator and U.S. representative in Congress, 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.

SECTION 4. 5.62 (1) (a) of the statutes is amended to read:

5.62 (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

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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.

SECTION 5. 5.62 (1) (b) 2. of the statutes is amended to read:

5.62 (1) (b) 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).

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

5.62 (2) (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

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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).

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

5.62 (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.

SECTION 8. 5.62 (3m) of the statutes is created to read:

5.62 (3m) (a) At the partisan primary, a ballot that includes all of the

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following shall be provided for the nomination of candidates for U.S. senator and U.S. representative in Congress, in the same form as prescribed under s. 7.08 (1) (a), except as authorized in s. 5.655:

1. The names of all candidates for U.S. senator and U.S. representative in Congress.

2. Below the name of each candidate under subd. 1., the candidate's political party or the candidate's political party preference or statement of principles, if any, in 5 words or less, as shown on the candidate's nomination papers.

3. A statement in substantially the following form, prominently placed: "You may vote for only one candidate for U.S. senator and one candidate for U.S. representative in Congress. You may vote for any candidate for U.S. senator and any candidate for U.S. representative in Congress regardless of the candidate's designated political party affiliation and regardless of your designation of a political party or vote for a candidate of a political party in a race in the partisan primary. A candidate's designation of a political party affiliation on this ballot does not constitute or imply the nomination, endorsement, or selection of the candidate by that political party."

(b) The order of candidates on the ballot under par. (a) 1. shall be determined by lot or as otherwise prescribed under s. 7.08 (1) (a).

(c) The ballot under par. (a) 1. may not include any space for a write-in vote, and any attempt to write-in the name of a person not on the ballot in a voted ballot under this subsection may not be counted.

SECTION 9. 5.81 (4) of the statutes is amended to read:

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5.81 (4) In partisan primary elections, except with respect to the offices of U.S. senator and U.S. representative in Congress, 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).

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

5.84 (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, except with respect to the offices of U.S. senator and U.S. representative in Congress, 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

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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.

SECTION 11. 5.91 (1) of the statutes is amended to read:

5.91 (1) It enables an elector to vote in secrecy and, except with respect to the offices of U.S. senator and U.S. representative in Congress, to select the party for which an elector will vote in secrecy at a partisan primary election.

SECTION 12. 5.91 (6) of the statutes is amended to read:

5.91 (6) ~~The~~ Except with respect to the offices of U.S. senator and U.S. representative in Congress, 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.

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

6.80 (2) (am) In partisan primaries, except with respect to the offices of U.S. senator and U.S. representative in Congress, an elector may vote for a person as the candidate of the party of the elector's choice, if that person's name does not appear on the official ballot of that party, by writing in the name of the person in the space provided on the ballot or the ballot provided for that purpose, or where voting machines are used, in the irregular ballot device, designating the party for which the elector desires such person to be the nominee.

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SECTION 14. 6.80 (2) (g) of the statutes is created to read:

6.80 (2) (g) In elections for offices at which instant runoff voting under s. 5.20 is used, an elector may indicate his or her preferences for each office for up to 5 candidates, including a write-in candidate. An elector who indicates preferences for candidates for an office must indicate a different preference for each candidate for that office. An elector is not required to indicate a preference for more than one candidate.

SECTION 15. 7.10 (2) of the statutes is amended to read:

7.10 (2) PREPARING BALLOTS. The county clerk shall prepare copy for the official ballots immediately upon receipt of the certified list of candidates' names from the commission. Names certified by the commission shall be arranged in the order certified. The county clerk shall place the names of all candidates filed in the clerk's office or certified to the clerk by the commission on the proper ballot or ballots under the appropriate office and party titles. The county clerk shall prepare a special ballot under s. 5.60 (8) showing only the candidates in the presidential preference primary. The county clerk shall prepare a special ballot under s. 5.62 (3m) showing only the candidates for the offices of U.S. senator and U.S. representative in Congress in the partisan primary.

SECTION 16. 7.50 (1) (b) of the statutes is amended to read:

7.50 (1) (b) When an elector casts more votes for any office or measure than he or she is entitled to cast at an election, all the elector's votes for that office or measure are invalid and the elector is deemed to have voted for none of them, except as provided in par. (c) ~~and~~, sub. (2) (d), and s. 7.62 for the purpose of ranking

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candidates for instant runoff voting. If an elector casts less votes for any office or measure than he or she is entitled to cast at an election, all votes cast by the elector shall be counted but no vote shall be counted more than once. Votes for the offices of U.S. senator and U.S. representative in Congress shall be counted as provided in s. 7.62.

SECTION 17. 7.50 (1) (c) of the statutes is amended to read:

7.50 (1) (c) If an elector casts more than one vote for the same candidate for the same office, the first vote is valid and the remaining votes are invalid. For the offices of U.S. senator and U.S. representative in Congress, as provided in s. 7.62, if an elector casts the same preference for more than one candidate, that ballot is invalid.

SECTION 18. 7.50 (1) (d) of the statutes is amended to read:

7.50 (1) (d) Whenever an electronic voting system is used at a polling place in a partisan primary, and the same ballot is utilized to cast votes for candidates of more than one recognized political party or candidates of a party and independent candidates, except with respect to the offices of U.S. senator and U.S. representative in Congress, if an elector designates a preference for a party or for independent candidates, only votes cast within that preference category may be counted. If an elector does not designate a preference and makes a mark opposite candidates of more than one recognized political party or opposite a candidate in the independent candidates' column and a candidate of a recognized political party, no votes cast by the elector for any candidate for partisan office are valid. Votes for other candidates and votes on ballot questions, if any, shall be counted if otherwise valid.

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SECTION 19. 7.60 (4) (a) of the statutes is amended to read:

7.60 (4) (a) The board of canvassers shall make separate duplicate statements showing the numbers of votes cast for the offices of president and vice president; state officials; U.S. senators and representatives in ~~congress~~ Congress; state legislators; justice; court of appeals judge; circuit judges; district attorneys; and metropolitan sewerage commissioners, if the commissioners are elected under s. 200.09 (11) (am). If a municipal judge elected under s. 755.01 (4) serves a municipality that is located partially within the county and candidates for that judgeship file nomination papers in another county, the board of canvassers shall prepare a duplicate statement showing the numbers of votes cast for that judgeship in that county for transmittal to the other county. For partisan candidates, the statements shall include the political party or principle designation, if any, next to the name of each candidate. The board of canvassers shall also prepare a statement showing the results of any county, technical college district, or statewide referendum. Each statement shall state the total number of votes cast in the county for each office; the names of all persons for whom the votes were cast, as returned; the number of votes cast for each person; the number of round-by-round votes cast for each person receiving votes at a general election under s. 7.62 (3); and the number of votes cast for and against any question submitted at a referendum. The board of canvassers shall use one copy of each duplicate statement to report to the elections commission, technical college district board, or board of canvassers of any other county and shall file the other statement in the office of the county clerk or board of election commissioners.

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SECTION 20. 7.60 (4) (c) of the statutes is renumbered 7.60 (4) (c) (intro.) and amended to read:

7.60 (4) (c) (intro.) In preparing the statements and determinations, the board of canvassers shall carefully review the tally sheets and inspectors' statement. The board of canvassers may omit the names of individuals whose names do not appear on the ballot and who receive a comparatively small number of votes. The board of canvassers shall designate votes received by such individuals as scattering votes. The board of canvassers shall append all of the following to each statement and determination ~~and~~:

1. A tabulation of the votes cast at each election district, ward, or combination of wards authorized under s. 5.15 (6) (b) in the county for each office and each individual, whether the votes are canvassed or not, ~~as well as the~~.

2. The total canvassed votes cast for each individual and each office, except where scattering votes are designated. If any votes are rejected, the board of canvassers shall specify the reasons therefor.

SECTION 21. 7.60 (4) (c) 3. of the statutes is created to read:

7.60 (4) (c) 3. After elections at which instant runoff voting under s. 5.20 is used, the number of first-choice preferences and lesser-choice preferences cast for each individual for each office, indicating the numbers for each choice.

SECTION 22. 7.60 (4) (c) 4. of the statutes is created to read:

7.60 (4) (c) 4. For each rejected vote, the board of canvassers' explanation for rejecting the vote.

SECTION 23. 7.62 of the statutes is created to read:

7.62 Canvass procedure for instant runoff voting. (1) DEFINITIONS. In this section:

(a) “Active candidate” means any candidate under this section that has not been defeated or elected.

(b) “Exhausted ballot” means a ballot that does not contain a highest-ranked active candidate and is not an abstention or an overvote.

(c) “Highest-ranked active candidate” means the active candidate assigned to a higher ranking than any other active candidate.

(d) “Overvote” means an instance in which an elector has ranked more than one candidate at the same ranking.

(e) “Ranking” means the number assigned by an elector to a candidate to express the elector’s preference for that candidate. The number “1” is the highest ranking, followed by “2,” then “3,” then “4,” and then “5.”

(f) “Round” means an instance of the sequence of voting tabulation beginning with sub. (3) (a).

(2) TALLY SHEETS. The commission shall prescribe a tally sheet form for canvassing of the elections in which instant runoff voting under s. 5.20 is used. The inspectors shall use the form in preparing the returns and shall retain the form as a part of the official returns.

(3) TABULATION; INACTIVE BALLOTS. In any election for an office conducted by instant runoff voting under s. 5.20, tabulation of the votes proceeds in rounds. Each ballot shall count as one vote for the highest-ranked active candidate on that ballot. If in any round the elector has indicated the same ranking for more than one

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candidate, the ballot for that round and all subsequent rounds is considered an overvote or exhausted ballot and not counted in that round and all subsequent rounds. If in any round the elector has skipped a ranking on their ballot, the elector's single vote shall be transferred to the next highest ranked candidate. If two rankings are skipped, that ballot is considered an inactive ballot. If in any round of tabulation a ballot does not contain a highest-ranked active candidate, that ballot shall be considered an overvote or exhausted ballot and not counted. If 2 or fewer active candidates remain, the active candidate with the greatest number of votes is elected, and the tabulation is complete. If more than 2 active candidates remain, the active candidate with the fewest votes is defeated, votes for the defeated candidate are transferred to each ballot's next-ranked active candidate, and a new round of tabulation begins.

(4) BATCH ELIMINATION. The chief election officer may modify the tabulation under sub. (3) to include batch elimination. If the tabulation includes batch elimination, then any time the active candidate with the fewest votes would be defeated under sub. (3), each active candidate in the elimination batch shall be simultaneously defeated instead. An active candidate is in the elimination batch if the number of elected and active candidates with more votes than that candidate is greater than the number of offices to be elected and it is mathematically impossible for that active candidate to be elected for any of the following reasons:

- (a) The active candidate has fewer votes than any other active candidate.
- (b) The active candidate's current vote total, plus all votes that could possibly

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be transferred to the active candidate in future rounds, would not be enough to equal or surpass the active candidate with the next highest current vote total.

(c) The active candidate has a lower current vote total than an active candidate described under par. (b).

(5) TIES. If 2 or more active candidates are tied with the fewest votes and tabulation under sub. (3) cannot continue until the active candidate with the fewest votes is defeated, then the active candidate to be defeated shall be determined by lot. Election officials may resolve prospective ties between active candidates prior to tabulation under sub. (3) after all votes are cast.

(6) TRANSPARENCY. The commission shall ensure that all tabulation records produced under this section, including the entire cast vote file record, are published on its website following an election conducted under this section.

SECTION 24. 8.16 (1) of the statutes is renumbered 8.16 (1) (a) and amended to read:

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

SECTION 25. 8.16 (1) (b) of the statutes is created to read:

8.16 (1) (b) The 5 persons who receive the greatest number of votes for the offices of U.S. senator and U.S. representative in Congress at any partisan primary shall be the persons whose names appear on the official ballot at the general

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election, except that if a candidate so nominated dies or becomes disqualified from holding the office for which the candidate is nominated, the vacancy shall be filled by the administrator by replacing the withdrawn candidate with the candidate who received the most votes at the partisan primary but did not qualify to advance to the general election. There may be fewer than 5 candidates on the ballot in the general election if fewer than 5 qualified candidates advance. Sufficient space shall be provided on the general election ballot for write-in candidates for the offices of U.S. senator and U.S. representative in Congress.

SECTION 26. 8.50 (3) (b) of the statutes is amended to read:

8.50 (3) (b) Except as otherwise provided in this section, the provisions for the partisan primary under s. 8.15 are applicable to all partisan primaries held under this section, and the provisions for spring primaries under s. 8.10 are applicable to all nonpartisan primaries held under this section. In a special partisan primary or election, the order of the parties on the ballot shall be the same as provided under s. 5.62 (1) or 5.64 (1) (b). No primary is required for a nonpartisan election in which not more than 2 candidates for an office appear on the ballot or for a partisan election, other than for the offices of U.S. senator and U.S. representative in Congress, in which not more than one candidate for an office appears on the ballot of each recognized political party. In every special election except a special election for nonpartisan state office where no candidate is certified to appear on the ballot, a space for write-in votes shall be provided on the ballot, regardless of whether a special primary is held.

SECTION 27. 8.50 (3) (c) of the statutes is amended to read:

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8.50 (3) (c) Notwithstanding ss. 5.37 (4), 5.91 (6) and 6.80 (2) (f), except with respect to the offices of U.S. senator and U.S. representative in Congress, whenever a special partisan primary is held concurrently with the presidential preference primary, an elector may choose the party column or ballot in which the elector will cast his or her vote separately for each of the 2 primaries. Whenever 2 or more special partisan primaries or one or more special partisan primaries and a partisan primary are held concurrently, the procedure prescribed in ss. 5.37 (4), 5.91 (6) and 6.80 (2) (f) applies.

SECTION 28. 10.02 (3) (b) 2. of the statutes is amended to read:

10.02 (3) (b) 2. At a partisan primary, the elector shall select the party ballot of his or her choice, other than with respect to the offices of U.S. senator and U.S. representative in Congress, and shall make a cross (X) next to or depress the lever or button next to the candidate's name for each office for whom the elector intends to vote, or shall, if applicable, insert or write in the name of the elector's choice for a candidate.

SECTION 29. Initial applicability.

(1) This act first applies to the 2024 partisan primary and general election.

(END)