



WISCONSIN LEGISLATIVE COUNCIL

Special Committee Staff Brief 04-7

OVERVIEW OF THE ELECTION LAW IN WISCONSIN

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STAFF BRIEF 04-7

ELECTION LAW REVIEW

INTRODUCTION

This Staff Brief provides background information to the members of the Joint Legislative Council's Special Committee on Election Law Review on Wisconsin's election process. The Special Committee is directed to examine the election process and the administration of elections in the state, other than campaign financing law. The special committee shall specifically examine the implementation of the federal Help America Vote Act of 2002 (HAVA), state oversight of elections in Wisconsin, and the recount process. The special committee may also examine other election-related issues such as voter registration and identification, new technologies for voting, the adequacy of staffing at polling places, and the adequacy of training received by poll workers. The Staff Brief also devotes additional attention to some issues that may be of particular concern to members of the Special Committee, such as the recount process. This Staff Brief ***does not*** include a discussion of Wisconsin's campaign finance laws [ch. 11, Stats.].

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PART I

ELECTIONS IN WISCONSIN

Wisconsin's statutes provide for the fair and orderly administration of elections in the state. This Part of the Staff Brief describes Wisconsin's regularly scheduled elections, other elections held when the need arises and the qualifications for voting in these elections.

THE ELECTORATE

The Wisconsin Constitution provides that every U.S. citizen age 18 or older who is a resident of an election district in Wisconsin is a qualified elector of that district. [art. III, s. 1, Wis. Const.] However, the Constitution also provides that the Legislature may enact laws defining residency, providing for the registration of electors, and excluding from the right of voting certain convicted felons and incompetent persons. [art. III, s. 2, Wis. Const.] The Constitution also authorizes the Legislature to extend the right of suffrage to additional classes, subject to ratification by the people. [art. III, s. 2 (5), Wis. Const.] This Section of the Staff Brief describes Wisconsin's statutory voter qualifications.

QUALIFICATIONS

Generally, every U.S. citizen 18 years of age or older is an eligible elector if the person has resided in an election district or ward for 10 days before any election. A U.S. citizen 18 years of age or older who moves within Wisconsin later than 10 days before an election must vote in his or her previous ward or election district if the person is otherwise eligible to vote. If the elector can comply with the 10-day residence requirement at the new address and is otherwise qualified, he or she may vote in the new ward or election district. [s. 6.02, Stats.]

Generally, an elector's residence is considered to be the place where "the person's habitation is fixed, without any present intent to move and to which, when absent, the person intends to return." [s. 6.10 (1), Stats.] The statutes also provide guidance for determining a voter's residence in special circumstances. For example, the statutes provide the following:

a. If a married person's family resides at one place and that person's business is conducted at another place, the person's residence is considered the family's, unless it is temporary or for transient purposes. [s. 6.10 (2), Stats.]

b. The residence of an unmarried person sleeping in one ward and boarding in another is the place where the person sleeps.

c. The residence of an unmarried person in a transient-type job who boards at different places for part of the week, month or year, if one of the places is the residence of the person's parents, is the place of the parents' residence unless through registration or similar act the person elects to establish a residence elsewhere. If the person has no parents and if the person has not registered elsewhere, the person's residence is the place which the person considered his or her residence in preference to any other for at least 10 days before the election.

d. A guest at a national or a state soldiers' home, a guest at a home for the aged supported by benevolence or a patient of any county home or other charitable institution, resides

in the municipality where the home is located and within the ward where the guest or patient sleeps, unless before becoming a guest or patient at the home he or she elects to maintain his or her prior residence as his or her voting residence.

e. A military elector who is the spouse or dependent of another military elector may elect to take as his or her residence either the individual's most recent residence in this state or the residence of the individual's spouse or the individual providing his or her support.

Under Wisconsin law, a person does not lose residence for the purposes of voting when the person travels temporarily to another community if the person maintains an intent to return or while absent from the state on business of the state or federal government. Conversely, no member of the armed forces of the United States gains a Wisconsin residence because of being stationed in Wisconsin and a person may not gain a residence in any ward or election district of this state if he or she is there for temporary purposes only.

A person who is qualified to vote except that he or she has not been a state resident for 10 days prior to the date of the presidential election is entitled to vote for the president and vice president but for no other office. [s. 6.15 (1), Stats.] In addition, a U.S. citizen who is not otherwise disqualified from voting and who has attained the age of 18 by the date of the election and who does not qualify as a resident of Wisconsin but who was last domiciled in Wisconsin immediately prior to the parent's departure from the United States, and who is not registered to vote or voting in another state, territory, or possession may vote in certain elections in Wisconsin. Such "overseas electors" may vote in any election for national office in this state but may not vote in an election for state or local office. [s. 6.24 (1) and (2), Stats.]

A person may not lose the right to vote at the person's place of residence while receiving public assistance or unemployment compensation even if the legal settlement for assistance is elsewhere. In addition, student status may not be a consideration in determining residence for the purpose of establishing voter eligibility.

If a person moves to another state with an intent to make a permanent residence there, or if while there the person exercises the right to vote as a citizen of that state by voting, the person loses Wisconsin residence. [s. 6.02, Stats.]

The statutes also specify several specific categories of persons who are not eligible to vote. Any person who is incapable of understanding the objective of the elective process or under guardianship pursuant to an order of a court is ineligible to vote. However, no person may be denied the right to register to vote or the right to vote because that person is alleged to be incapable of understanding the objective of the elective process unless the person has been adjudicated as incapable of understanding in a separate proceeding instituted for that purpose by an elector of the municipality. In addition, a person who has been convicted of treason, felony or bribery may not vote, unless his or her civil rights have been restored through pardon or through the completion of the terms of imprisonment or probation for the crime. Finally, a person may not be allowed to vote in any election in which the person has made or become interested, directly or indirectly, in any bet or wager depending upon the result of the election. [s. 6.03, Stats.]

CHALLENGES TO QUALIFICATIONS

An inspector at a polling place who knows or suspects that an elector attempting to vote is unqualified must challenge that elector. If a person is challenged by an inspector, the person must take an oath swearing or affirming that he or she will truthfully answer questions put to him or her by the inspectors with respect to his or her place of residence and other qualifications.

The challenged elector must be asked questions, which are specified in rules promulgated by the Elections Board, relating to the challenged elector's qualifications. For example, if the elector's citizenship is challenged, the elector is asked whether he or she is a citizen of the United States. Similarly, if the elector's residence in the ward is questioned, the elector is asked a series of questions designed to aid in determining the elector's residence. [s. 6.92, Stats.] The questions are specified in ch. ElBd 9, Wis. Adm. Code.

Challenges to an elector's qualifications may also be made by other electors who know or suspect that an elector is not qualified to vote. In such a case, both the challenging elector and the challenged elector are asked questions designed to elicit information about the qualifications of the challenged elector. [s. 6.925, Stats., and ch. ElBd 9, Wis. Adm. Code.]

If the person who is challenged refuses to fully answer any relevant questions put to him or her by the inspectors, the inspectors must reject the elector's vote. If the challenge is not withdrawn after the person has answered the questions, one of the inspectors must administer to the challenged person an oath or affirmation specified in the statutes attesting to the person's qualifications.

If the person who is challenged refuses to take the oath or affirmation, the person's vote must be rejected. However, if the person challenged answers fully all of the relevant questions given by the inspector, takes the oath or affirmation and fulfills any necessary registration requirements, and the answers to the questions given by the person indicate that the person meets the voting qualification requirements, the person's vote must be received. [s. 6.94, Stats.] Before depositing such a ballot, however, the inspectors must write on the back of the ballot the serial number of the challenged person corresponding to the number kept on the registration or poll list. If voting machines are used in the municipality, the person's vote may only be received on an absentee ballot marked on the back with the elector's corresponding registration or poll number. The inspectors must mark on the registration or poll list the reasons for the challenge to the elector. The challenged person's vote must be counted and the challenge decided by local election officials. [s. 6.95, Stats.]

REGISTRATION/POLL LISTS

Presently, every municipality with a population of over 5,000 persons must keep a registration list consisting of all currently registered electors. Municipalities with a population of under 5,000 may, by ordinance or referendum, require registration. A municipality that does so may also abolish the registration requirement by referendum. [s. 6.27, Stats.] However, beginning with the spring primary election in 2006, registration will be required in every municipality regardless of the municipality's size. [s. 6.27, Stats., as affected by 2003 Wisconsin Act 265.]

Registration for any election must close at 5 p.m. on the second Wednesday preceding the election. Registration may be accepted after this deadline if the municipal clerk determines that the registration list can be revised to incorporate the registration in time for the election. The statutes identify places of registration including the municipal clerk's office, the office of the city board of election commissioners, the office of the register of deeds and high schools. Other locations may include fire houses, police stations, public libraries, supermarkets and other sites. [s. 6.28, Stats.]

A person may also register to vote after the official date for the close of registration. Generally, a person may register late by filing with the municipal clerk a registration form completed by the person and acceptable proof of residence or corroboration of residence by one other elector of the municipality. Once the registration form has been filed, the municipal clerk must issue to the person a certificate addressed to the inspectors of the proper ward directing that the elector be permitted to vote. The certificate must be presented by the person to the inspectors when he or she arrives at the polling place. [s. 6.29, Stats.]

A person may also register after the deadline for registration at the polling place (or at another location in the same building as the polling place) on the day of the election. A person registering at the polling place is required to complete a registration form and provide acceptable proof of residence or corroboration of residence by one other elector of the municipality. Proof of residence is acceptable if it shows the person's current and complete name and current and complete residential address. Forms of identification which constitute acceptable proof of residence include the following: (a) a Wisconsin driver's license; (b) a Wisconsin identification card; (c) any other official identification card or license issued by a Wisconsin governmental body or unit or by an employer in the normal course of business (except a business card); (d) a credit card; (e) a library card; (f) a check-cashing or courtesy card issued by a merchant in the normal course of business; (g) a recent real estate tax bill or receipt; (h) a current residential lease; (i) a university, college or technical college fee or identification card; (j) an airplane pilot's license; and (k) a gas, electric or telephone service statement for the period commencing not earlier than 90 days before election day. [s. 6.55, Stats.]

Generally, the names and addresses of all electors who vote, and the names of electors who are registered to vote, are available for public inspection. As discussed in more detail below, when an elector appears at a polling place to vote, he or she must disclose his or her name and address. However, victims of domestic abuse may vote and register to vote confidentially. Municipal clerks must issue a special identification card to electors qualifying for confidential treatment. The card contains a unique number and may be presented to poll workers in lieu of a name and address or in lieu of just the address. Although the general public does not have access to information about a confidential name and address, the municipal clerk may disclose the information to a narrow selection of statutorily identified entities for limited purposes such as law enforcement officials for official purposes and a clerk of court for purposes of jury selection. [s. 6.47, Stats.]

REGULARLY SCHEDULED ELECTIONS

SPRING PRIMARY AND SPRING ELECTION

The spring election, which is held on the first Tuesday in April, is used for the purpose of electing judicial, educational and municipal officers, nonpartisan county officers, and sewerage

commissioners. [s. 5.02 (21), Stats.] A spring primary is held to nominate candidates to be voted on at the spring election. It is held on the third Tuesday in February. In addition, the presidential preference primary is held concurrently with the spring primary. [s. 5.02 (22), Stats.]

Nomination papers for offices to be filled at the spring election may be circulated no sooner than December 1 preceding the election and must generally be filed no later than 5 p.m. on the first Tuesday in January preceding the election, or the next day if that Tuesday is a holiday. [s. 8.10 (2), Stats.]

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

Cities may hold primaries for the nomination of candidates for a city office. A majority of all members of the city's governing body must decide upon a spring primary not later than three days after the deadline for filing nomination papers. [s. 8.11 (1) (a), Stats.] A city may also require, by charter ordinance, a primary to nominate candidates for the office to be held whenever three or more candidates file nomination papers for a city office. [s. 8.11 (1) (b), Stats.] In addition, whenever electors equal to at least 10% of the vote for governor in the city at the last general election file a petition conforming to certain statutory requirements with the city clerk within three days after the deadline for filing nomination papers, a primary must be held for a specific election. [s. 8.11 (1) (c), Stats.] However, whenever the number of candidates for any city office does not exceed twice the number to be elected to the office, no primary may be held for the office and all of the candidates' names must appear on the ballot at the election. [s. 8.11 (1) (d), Stats.]

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

FALL PRIMARY AND FALL ELECTION

The fall, or general, election is held in even-numbered years on the Tuesday after the first Monday in November to elect U.S. Senators and Representatives, presidential electors, State Senators, 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. [s. 5.02 (5), Stats.]

The fall primary is held on the second Tuesday in September for the purpose of nominating candidates to be voted for at the general election and to determine which candidates for state offices, other than district attorney, may participate in public financing through the

Wisconsin Election Campaign Fund. [s. 5.02 (18), Stats.] Generally, the person who receives the most votes for an office on a party ballot after the fall primary becomes the party's candidate for that office, and his or her name is placed on the ballot for the general election. In addition, all independent candidates appear on the general election ballot regardless of the number of votes received at the fall primary. [s. 8.16 (1), Stats.]

PRESIDENTIAL PREFERENCE PRIMARY

In a presidential election year, voters are given the opportunity at the spring primary to vote for a candidate to be the presidential candidate for each party. Unless a consolidated ballot is used, there must be a separate ballot for each recognized political party filing a certification indicating that it will participate in the presidential preference primary. The ballot must list the names of all potential candidates of that party determined at the presidential preference selection process. In addition, the ballot must afford the voter an opportunity to nominate another potential candidate by write-in vote or to vote for an unrestricted delegation to the party convention. Each voter may only vote on one ballot, however. [s. 5.58 (2r), Stats.]

The Elections Board must notify each state party organization chairperson of the results of the presidential preference vote cast within the state and within each congressional district by the second Tuesday following the presidential preference primary. [s. 8.12 (3), Stats.]

OTHER ELECTIONS

Wisconsin law also provides for a number of other elections that are held when the need arises. This section of the Staff Brief will describe special elections, referenda, recall elections and the local initiative.

SPECIAL ELECTIONS TO FILL VACANCIES

Special elections are held to fill elective offices that become vacant during the term of office or to conduct a referendum. Special elections to fill vacancies will be described here, while referenda will be described below.

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

Generally, no special election may be held after February 1 preceding the spring election unless it is held on the same day as the spring election, nor after September 1 preceding the general election unless it is held on the same day as the general election, until the day after that election. If the special election is held on the day of the general election, the primary for the special election, if any, must be held on the day of the September primary. If the special election is held on the day of the spring election, the primary for the special election, if any, must be held on the day of the spring primary. [s. 8.50 (intro.), Stats.]

Special elections are held when ordered by the appropriate local or state officials, as specified in the statutes. Notice of any special election must be issued upon the filing of the order for the special election by publication in a newspaper. If the special election concerns a national or state office, the Elections Board must give notice as soon as possible to the county clerks. Upon receipt of notice from the Elections Board, or when the special election is for a county office, the county clerk must give notice as soon as possible to all municipal clerks and publish one Type A notice for all offices to be voted upon within the county. [s. 8.50 (1) (b), Stats.]

The date for the special election may not be held less than 62 nor more than 77 days from the date of the order for special election, except when the special election is held on the day of the general election or spring election. If a special election is held concurrently with the spring or general election, the special election may be ordered not earlier than 92 days prior to the spring primary or September primary, respectively, and not later than 49 days prior to that primary. If a primary is required, the primary must be on the day four weeks before the day of the special election. However, when the special election is held on the same day as the general election, the special primary must be held on the same day as the September primary or, if the special election is held concurrently with the spring election, the primary must be held concurrently with the spring primary. [s. 8.50 (2), Stats.]

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

a. A vacancy in the office of U.S. Senator or Representative occurring prior to the second Tuesday in May in the year of the general election must be filled at a special primary and election. A vacancy in that office occurring between the second Tuesday in May and the second Tuesday in July in the year of the general election must be filled at the September primary and general election.

b. A vacancy in the office of Secretary of State, State Treasurer, Attorney General or State Superintendent, occurring more than six months before the expiration of the current term, may be filled at a special election.

c. Any vacancy in the office of State Senator or Representative to the Assembly occurring before the second Tuesday in May in the year in which a regular election is held to fill that seat must be filled as promptly as possible by special election. However, any vacancy in those offices occurring after the close of the last regular floorperiod of the Legislature held during the term must be filled only if a special session or extraordinary floorperiod of the Legislature is called or a veto review period is scheduled during the remainder of the term. The special election to fill the vacancy must be ordered, if possible, so the new member may participate in the special session or floorperiod.

d. Whenever a member of the Legislature is elected to another office after the commencement of his or her term, and the term of the new office or the period during which the legislator is eligible to assume that office commences prior to the end of the legislator's original term of office, the governor may call a special election to fill the seat of the member in anticipation of a vacancy, upon receipt of a written resignation from that member which is effective on a date not later than the date of the proposed special election.

e. Generally, a vacancy in the office of justice of the supreme court, court of appeals judge or circuit judge occurring in any year after the date of the spring election and on or before December 1 must be filled as follows: if in the office of circuit judge, at the succeeding spring election; if in the office of court of appeals judge, at the first succeeding spring election when no other court of appeals judge is to be elected from the same court of appeals district; or, if in the office of justice, at the first succeeding spring election when no other justice is to be elected. A vacancy in the office of justice, court of appeals judge or circuit judge occurring after December 1 and on or before the date of the succeeding spring election shall be filled as follows: if in the office of circuit judge, at the second succeeding spring election; if in the office of court of appeals judge, at the first spring election, beginning with the second succeeding spring election, when no other court of appeals judge is to be elected from the same court of appeals district; or, if in the office of justice, at the first spring election, beginning with the second succeeding spring election, when no other justice is to be elected.

f. If a vacancy in the office of justice, court of appeals judge or circuit judge occurs after December 1 and on or before the date of the succeeding spring election as a result of the resignation of the incumbent, the vacancy must be filled at the regularly scheduled election if an election for that seat is scheduled to be held at the succeeding spring election and if the incumbent is not a candidate to succeed himself or herself.

g. If a vacancy in the office of justice, court of appeals judge or circuit judge occurs after the date of the spring election for that seat and before the succeeding August 1 as a result of the resignation of the incumbent and the incumbent is not elected to succeed himself or herself, the vacancy shall be filled by the individual who was elected at the regularly scheduled election.

h. A permanent vacancy in the office of municipal judge may be filled by temporary appointment of the municipal governing body, or, in the case of a joint municipal judge, jointly by the governing bodies of all municipalities served by the judge. The office must then be permanently filled by special election, held concurrently with the next spring election following the occurrence of the vacancy, except that a vacancy occurring during the period after December 1 and on or before the date of the spring election shall be filled at the second succeeding spring election, and no such election may be held after the expiration of the term of office nor at the time of holding the regular election for the office.

i. If through neglect or failure, an elected officer who should have been chosen at the spring or general election is not chosen at that election, a special election may generally be held to fill the vacancy.

j. Whenever the right to office of any person who is elected to the Legislature or the U.S. Senate or House of Representatives ceases before the commencement of the term of office to which he or she is elected, a special election must be held to fill the vacancy.

k. At the direction of the governor, a special election must be held to fill any vacancy not provided for above, except judicial offices.

[s. 8.50 (4), Stats.]

REFERENDUM

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

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

Generally, all proposed constitutional amendments and any other measure or question to be submitted to a vote of the people must be filed with the official or agency responsible for preparing the ballots no later than 42 days prior to the election at which the amendment, measure, or question will appear on the ballot. [s. 8.37, Stats.] The statutes require the clerk or clerks of the jurisdiction holding a special referenda to publish notice of the referenda. [s. 8.55, Stats.] Whenever the clerks of more than one jurisdiction are required to publish the same notice on the same day, they may publish one notice and share the cost. [s. 8.55 (4), Stats.]

RECALL ELECTIONS

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

Generally, a petition for recall of a state, congressional, legislative, judicial or county officer must be signed by electors equal in number to at least 25% of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled. [art. XIII, s. 12 (1), Wis. Const., and s. 9.10 (1) (b), Stats.] A petition for the recall of a city, village, town or school district officer must be signed by electors equal in number to at least 25% of the vote cast for the office of President of the United States at the last election within the same district or territory as that of the officeholder being recalled. [s. 9.10 (1) (b), Stats.] Recall petitions must be filed with the same official or agency with whom nomination papers or declarations of candidacy for that office are filed. That official or agency is required to determine and certify to any interested person the number of signatures required on a recall petition. If no statistics are available to calculate the required number of signatures on a petition for recall of an officer, the number of signatures are determined according to a formula specified in the statutes. [s. 9.10 (1) (c) to (d), Stats.]

Although the form of all recall petitions must generally meet the same statutory requirements, e.g., each recall petition must have the words “RECALL PETITION” at the top in bold print, only a recall petition for a city, village, town or school district office must contain a

statement of a **reason** for the recall which is related to the official responsibilities of the official for whom removal is sought. [s. 9.10 (2) (a) to (c), Stats.]

Before a petitioner can circulate or file a recall petition, the petitioner must file a registration statement applicable to political committees, groups and individuals under s. 11.05 (1) or (2), Stats. The petitioner must also include a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, where applicable, a statement of a reason for the recall. [s. 9.10 (2) (d), Stats.]

A recall petition for the recall of a state, congressional, legislative, judicial or county officer must be offered for filing by 5 p.m. on the 60th day commencing after registration. A recall petition for the recall of a city, village, town or school district officer may be offered for filing no later than 5 p.m. on the 30th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed and no signature may be counted unless the date of the signature falls within the applicable periods identified above. [s. 9.10 (2) (d), Stats.] In addition, no recall petition may be filed prior to the expiration of one year after commencement of the term of office for which the officer is elected. [s. 9.10 (2) (s), Stats.]

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

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

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

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

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

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

For other municipal and school district officers, if more than two persons compete for an office, a recall primary is required. The names of the two persons receiving the highest number of votes in the primary are certified to appear on the ballot in the recall election. However, if any person receives a majority of the total number of votes cast in the primary, the recall election may not be held. If the incumbent receives a majority of the votes, he or she retains the office for remainder of the term. If another candidate receives a majority of the votes, that candidate is elected to serve for the remainder of the unexpired term of the incumbent. [s. 9.10 (4) (f), Stats.]

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

A recall primary or election involving more than one official may be held on the same day. If more than one official of the same office designation elected at-large for the same term from the same district or territory is the subject of a recall petition, there is required to be a separate election contest for the position held by each official. Candidates must designate which position they are seeking on their nomination papers. Instructions must appear on the ballot to electors to vote for each position separately. [s. 9.10 (5) (a), Stats.]

An official being recalled may continue to perform the duties of his or her office until a certificate of election is issued to his or her successor. [s. 9.10 (5) (b), Stats.]

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

INITIATIVE (DIRECT LEGISLATION)

Wisconsin law authorizes citizens to petition certain municipal governments to enact ordinances or resolutions without alteration. Electors in a city or village, equal in number to 15% of the votes cast for governor at the last general election in their city or village, may sign and file a petition with the city or village clerk requesting that an attached proposed ordinance or resolution either be adopted by the common council of the city or the village board or be referred to a vote of the electors without alteration. The form of the petition must meet certain statutory requirements and may not be signed 60 or more days before the date the petition is offered for

filing. After the petition has been offered for filing, no name may be erased or removed. [s. 9.20 (1) and (2m), Stats.]

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

The common council or village board must, without alteration, either pass the ordinance or resolution within 30 days following the date of the clerk's final certificate, or submit it to the electors at the next spring or general election, if the election is more than six weeks after the date of the council's or board's action on the petition or the expiration of the 30-day period, whichever occurs first. If there are six or fewer weeks before the election, the ordinance or resolution must be voted on at the next election thereafter. The council or board, by a 3/4 vote of the members-elect, may order a special election for the purpose of voting on the ordinance or resolution at any time prior to the next election. However, no more than one special election for an initiative may be ordered in any six-month period. [s. 9.20 (4), Stats.]

The clerk must give notice of the ordinance or resolution. [s. 9.20 (5), Stats.] The ordinance or resolution does not need to be printed in its entirety on the ballot, but a concise statement of its nature must be printed together with a question permitting the elector to indicate approval or disapproval of its adoption. [s. 9.20 (6), Stats.] If a majority vote in favor of adoption of the ordinance or resolution, the ordinance or resolution takes effect upon publication, which must occur within 10 days after the election. [s. 9.20 (7), Stats.]

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

PART II

SELECTION OF CANDIDATES

The statutes specify who may appear on ballots and how their names may be placed on the ballot. This Part of the Staff Brief describes ballot access in Wisconsin and the nomination process.

BALLOT ACCESS

PRESIDENTIAL PREFERENCE PRIMARY ACCESS

No later than 5 p.m. on the third Tuesday in November (or the next day if Tuesday is a holiday), of the year before the year in which electors for President and Vice President are to be elected, the state chairperson of each recognized political party listed on the official ballot at the last gubernatorial election whose candidate for governor received at least 10% of the total votes cast for that office may certify to the Elections Board that the party will participate in the presidential preference primary. For each party filing certification, voters must be given an opportunity to express their preference for the person to be the presidential candidate of the party at the spring election. [s. 8.12 (1) (a), Stats.]

On the second Tuesday in December of the year before the year in which electors for president and vice president are to be elected, a committee must be convened at the State Capitol. The committee must consist of the following members: (a) for each party, the state chairperson of that state party organization or the chairperson's designee, and one national committeeman and one national committeewoman designated by the state chairperson; (b) the Speaker and the minority leader of the Assembly or their designees; and (c) the President and the minority leader of the Senate or their designees. The committee must select an additional member to act as chairperson and must determine, and certify to the Elections Board no later than the following Friday, the names of all candidates of the political parties represented on the committee for the office of President. The committee is required to place the names of all candidates whose candidacy is generally advocated or recognized in the national news media throughout the United States on the ballot, and may also place the names of other candidates on the ballot. The committee has sole discretion to determine that a candidacy is generally advocated or recognized in the national news media throughout the United States. [s. 8.12 (1) (b), Stats.]

Any person seeking the nomination for the office of President of the United States by the national convention of a political party filing a certification or any committee organized in Wisconsin on behalf of, and with the consent of such person, may submit to the Elections Board a petition to have the person's name appear on the presidential preference ballot. The petition must be filed no later than 5 p.m. on the first Tuesday in January of each presidential election year. The petition may not be circulated before the second Tuesday in December preceding such year. The petition must be signed by at least 1,000 electors in each congressional district. [s. 8.12 (1) (c), Stats.]

GENERAL ELECTION

At September primaries, a ballot must 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 Elections Board. The ballots must be made up of the several party tickets with each party that is entitled to participate in the primary having its own ballot. The independent candidates for state office, other than district attorney, receive a separate ballot. Each party and the independent candidates are required to be represented in one or more separate columns or rows on the ballot at polling places where voting machines are used. At polling places using an electronic voting machine, each party and the independent candidates may be represented in separate columns or rows on the ballot. [s. 5.62 (1) (a), Stats.]

Every recognized political party listed on the official ballot at the last gubernatorial election whose candidate for any statewide office received at least one percent of the total votes cast for that office is entitled to a separate primary ballot or one or more separate columns or rows on the primary ballot and a separate column on the general election ballot in every ward and election district. In addition, 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 one percent of the total vote cast for that office is entitled to the same ballot treatment. An organization which was listed as “independent” at the last general election and whose candidate meets the same qualifications as identified above will receive the same ballot status if the chairperson and secretary of the organization file a petition with the Elections Board. A petition may be filed no later than 5 p.m. on June 1 in the year of each general election. The party must, however, have at least one candidate qualify to be on the ballot. [s. 5.62 (1) (b), Stats.]

Any other political organization may be represented on a separate primary ballot or one or more separate columns or rows on the primary ballot and a separate column on the general election ballot in every ward and election district if it files a petition with the Elections Board. The petition must be filed not later than 5 p.m. on June 1 in the year of a September primary and must be signed by at least 10,000 electors, including at least 1,000 electors residing in each of at least three separate congressional districts. The petition must conform to certain statutory requirements. When the candidates of a political organization filing a valid petition fulfill the requirements prescribed by law, they must 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. [s. 5.62 (2), Stats.]

NOMINATION OF CANDIDATES

In addition to the law’s provisions governing a party’s ballot status described above, the law also contains requirements governing individual candidates’ ability to appear on the spring and general elections. This Section of the Staff Brief discusses those requirements.

NOMINATION PAPERS

Generally, candidates for offices to be filled at the spring election and general election are nominated by nomination papers, and a primary if one is necessary. Towns and villages may nominate candidates by caucus. For candidates for the spring election, nomination papers may

not be circulated before December 1 preceding the election and may be filed no later than 5 p.m. on the first Tuesday in January preceding the election (or the next day if Tuesday is a holiday). Nomination papers for the September primary may not be circulated before June 1 preceding the general election and may be filed no later than 5 p.m. on the second Tuesday of July preceding the September primary. If an incumbent fails to file nomination papers and a declaration of candidacy by the deadlines, the deadline for filing is extended by 72 hours for all candidates for the office held by the incumbent, other than the incumbent. However, no extension of time for filing nomination papers applies if the incumbent files written notification with the appropriate filing officer or agency that he or she is not a candidate for reelection to his or her office. The notice must be filed no later than 5 p.m. on the second Friday preceding the general filing deadline. [ss. 8.10 and 8.15, Stats.]

Each nomination paper must contain a statement at the top identifying the candidate, the candidate's address and the office the candidate seeks. The statement must also indicate that the signers desire the candidate to be on the ballot and that he or she is eligible to vote for the candidate.

The statutes specify the number of signatures required for nomination for each office. The number of required signatures for nomination is as follows:

- a. For statewide offices, not less than 2,000 nor more than 4,000 electors.
- b. For court of appeals judges, not less than 1,000 nor more than 2,000 electors.
- c. For judicial offices in counties over 500,000 population, not less than 1,000 nor more than 2,000 electors.
- d. For judicial offices other than those specified above, not less than 200 nor more than 400 electors.
- e. For Representatives in Congress, not less than 1,000 nor more than 2,000 electors.
- f. For State Senators, not less than 400 nor more than 800 electors.
- g. For Representatives to the Assembly, not less than 200 nor more than 400 electors.
- h. For district attorneys, not less than 500 nor more than 1,000 electors in prosecutorial units over 100,000 population and not less than 200 nor more than 400 electors in prosecutorial units of 100,000 population or less.
- i. For county executives in counties over 500,000 population, not less than 2,000 nor more than 4,000 electors.
- j. For county executives in counties between 100,000 and 500,000 population, not less than 500 nor more than 1,000 electors.
- k. For county executives in counties under 100,000 population, not less than 200 nor more than 400 electors.
- l. For supervisors in counties between 100,000 and 500,000 population, not less than 100 nor more than 200 electors, except as provided below.

m. For supervisors in counties under 100,000 population, not less than 20 nor more than 100 electors.

n. For other county offices, not less than 500 nor more than 1,000 electors in counties over 100,000 population and not less than 200 nor more than 400 electors in counties of 100,000 population or less.

o. For members of the metropolitan sewerage commission in districts over 1,000,000 population, not less than 1,000 nor more than 2,000 electors, in districts over 200,000 but not over 1,000,000 population, not less than 200 nor more than 400 electors, and in districts not over 200,000 population, not less than 100 nor more than 200 electors.

p. For city offices in first class cities, not less than 1,500 nor more than 3,000 electors for city-wide offices, not less than 200 nor more than 400 electors for alderpersons elected from aldermanic districts and not less than 400 nor more than 800 electors for members of the board of school directors elected from election districts.

q. For city offices in second and third class cities, not less than 200 nor more than 400 electors for city-wide offices and not less than 20 nor more than 40 electors for alderpersons elected from aldermanic districts.

r. For city offices in fourth class cities, not less than 50 nor more than 100 for city-wide offices and not less than 20 nor more than 40 electors for alderpersons elected from aldermanic districts.

s. For school district officer in any school district which contains territory lying within a second class city, not less than 100 nor more than 200 electors.

t. For school district officer in any school district which does not contain territory lying within a first or second class city, if nomination papers are required by applicable state law [s. 120.06 (6) (a), Stats.], not less than 20 nor more than 100 electors.

u. For other offices, not less than 20 nor more than 100 electors. [ss. 8.10 (3) and 8.15 (6), Stats.]

The county board of any county having a population of at least 100,000 but not more than 500,000 may provide by ordinance that the number of required signatures on nomination papers for the office of county supervisor in the county is not less than 50 nor more than 200 electors. [s. 8.10 (3m), Stats.]

Each person that signs a nomination paper must reside in the jurisdiction or district which the candidate named on the paper will represent if elected. Only one signature per person for the same office is valid. In addition to his or her signature, each signer of a nomination paper must list his or her municipality of residence for voting purposes, the street and number, if any, on which the signer resides, and the date of signing. [ss. 8.10 (4) and 8.15 (2), Stats.]

All nomination papers must be accompanied by a declaration of candidacy. In addition, if a candidate has not filed a registration statement at the time he or she files nomination papers, the candidate must file the statement with the papers. A candidate for state office or municipal judge must also file a statement of economic interests with the State Ethics Board. [ss. 8.10 (5) and 8.15 (4) (b), Stats.]

An affidavit of the person elector circulating the nomination papers must appear at the bottom of each nomination paper. The affidavit must state, among other things: the circulator's residence with street and number, if any, and a statement indicating that the circulator personally circulated the nomination paper and personally obtained each of the signatures. The circulator's affidavit must also provide other statements indicating the circulation papers are valid. The affidavit may be made by the candidate or any qualified elector. [ss. 8.10 (3) and 8.15 (4) (a), Stats. See also *Frami v. Ponto*, 255 F. Supp. 962 (WD Wis. 2003), holding that the state's requirement that circulators of nomination papers and petitions be residents of the jurisdiction is unconstitutional.]

A candidate may not run in more than one party primary at the same time. A filing official may not accept nomination papers for the same person in the same election for more than one party. An independent candidate at a partisan primary or other election may not file nomination papers as the candidate of a recognized political party for the same office at the same election. In addition, a person who files nomination papers as the candidate of a recognized political party may not file nomination papers as an independent candidate for the same office at the same election. [s. 8.15 (7), Stats.]

FILING OFFICER

Nomination papers for state offices, certain jointly elected municipal judges, seats on certain metropolitan sewerage commissions and for the offices of U.S. Senator and Representative in Congress must be filed in the office of the Elections Board. Nomination papers for county offices must be filed in the office of the county clerk or the board of election commissioners. For city offices and other offices voted for exclusively within the municipality, except the office of county supervisor, nomination papers must be filed in the office of the municipal clerk or board of election commissioners. Nomination papers for school district offices to be voted for within more than one municipality must be filed with the person designated by the school board as the filing officer for their school district. [ss. 8.10 (6) and 8.15 (8), Stats.]

NOMINATION BY CAUCUS

In lieu of nomination by nomination papers and a primary, towns and villages may nominate candidates for town or village elective office by caucus. The governing body of a town or village must, between December 1 and January 1, decide the date of the caucus. The date of the caucus may be established between the first Tuesday in January and the last Tuesday in January. When possible, preference should be given to having the caucus on the last Tuesday in January. [s. 8.05 (1) (a), Stats.]

Whenever a caucus is held, the municipal clerk must post notice of the date, time and place for the caucus in the clerk's office and publish one notice in a newspaper at least five days before the date of the caucus. [s. 8.05 (1) (b), Stats.] The town chairperson or village president and the municipal clerk are required to serve as caucus officials. If the chairperson or president is a candidate, he or she must instead call for the election of officials to conduct the caucus. [s. 8.05 (1) (c), Stats.]

At the caucus, the names of candidates are placed in nomination either by motion made and seconded from the floor or by writing the candidate's name on a slip of paper distributed to

those electors attending the caucus by the caucus tellers. Only persons placed in nomination may be voted on. [s. 8.05 (1) (d), Stats.] Before balloting, the caucus chairperson is required to announce the names of all candidates placed in nomination. [s. 8.05 (1) (f), Stats.]

Generally, ballots must be cast for each office but the caucus chairperson may dispense with voting by ballot when only one or two persons are nominated for the same office. The two candidates receiving the highest number of votes cast for each office are then nominated and certified to the municipal clerk by the caucus chairperson and tellers. [s. 8.05 (1) (g) and (h), Stats.]

Village trustees (except the village president) must be nominated together and at-large. The candidates, equal to twice the number of positions to be filled, who receive the most votes are nominated and certified. [s. 8.05 (1) (i), Stats.]

After nominations have been made, the municipal clerk is required to notify in writing each candidate whose name has been certified as a nominee of his or her nomination. Upon receipt of the nomination notice, each candidate must file a declaration of candidacy with the municipal clerk. If the candidate has not filed a registration statement at the time of the notification, the candidate must file it along with the declaration of candidacy. In addition, a candidate for municipal judge must also file a statement of economic interests with the State Ethics Board.

The municipal clerk must place the name of each qualified candidate on the ballot after receiving the declaration of candidacy and registration statement of each candidate and after a statement of economic interests by each candidate for municipal judge has been filed. [s. 8.05 (1) (j), Stats.]

Within 10 days of the date of the original caucus, the town board chairperson or the village president may reconvene the caucus to correct any procedural error or to nominate a candidate for a position for which no candidate was nominated or for which no candidate nominated at the original caucus qualified. The municipal clerk must give notice of the reconvened caucus in the same manner as provided for the original caucus. [s. 8.05 (1) (k), Stats.]

PRIMARY ELECTIONS

Once candidates are nominated, primaries are often held to narrow the field of candidates in a particular party or for a particular office.

Nonpartisan Primary

In cities, a primary may be held for the nomination of candidates for city office, if a majority of all the members of the governing body of the city so decide. In addition, any city may provide by charter ordinance that a primary must be held whenever three or more candidates file nomination papers for a city office. The electors in a city may also require a primary be held by filing a petition with the city clerk requesting a primary. The petition must conform to certain statutory requirements and contain signatures equal in number to at least 10% of the vote for governor in the city at the last general election. However, whenever the number of candidates for any city office does not exceed twice the number to be elected to the office, no primary may

be held for the office and all the candidates' names must appear on the ballot for the ensuing election. [s. 8.11 (1), Stats.]

In Milwaukee County, a primary must be held whenever there are more than twice the number of candidates to be elected to any judicial office within the county or to the county board of supervisors from any one district.

A primary must also be held in first class cities (Milwaukee) whenever there are more than two candidates for member of the board of school directors at-large or from any election district in any year. A primary is also required if more than two candidates file nomination papers for the office of State Superintendent, justice, court of appeals judge in the same district or for judge of the same branch of circuit court. A primary must be held in an election for county board supervisor whenever three or more candidates file nomination papers. [s. 8.11, Stats.]

For most offices, the two candidates for each office who received the most votes at the primary must appear on the spring election ballot. For certain other offices, the number of candidates who advance to the spring election ballot is equal to twice the number of officers to be elected. [s. 5.58 (3), Stats.]

Partisan Primary

At the September primary, electors may vote for the candidate of only one party or any of the independent candidates for state office and may only vote for one candidate for a single office. [s. 5.62 (5), Stats.]

Generally, 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, becomes the party's candidate for the office, and the person's name must appear on the official ballot at the next election. All independent candidates must be on the general election ballot regardless of the number of votes they received at the primary.

A person who receives only write-in votes at the primary may appear on the official ballot as the candidate of a recognized political party for an office for which no candidate's name appears on the ballot, but only if the person receives at least 5% of the vote that was cast in the jurisdiction or district for the party's gubernatorial candidate at the last general election or the number of votes equivalent to the minimum number of signatures required on nomination papers for that office, whichever is greater. The write-in candidate must also do the following: (1) file a declaration of candidacy after notification of nomination is mailed or personally delivered to the person by the filing officer or agency; (2) file a statement of economic interests with the Ethics Board if the person is a candidate for state office; and (3) file a registration statement. [s. 8.16 (1) and (2), Stats.]

If it is not possible to tell how many write-in votes are needed because the boundaries of a district in which the candidate seeks office have been changed since the most recent gubernatorial election, the number of votes needed is determined by a statutory formula. If a candidate of a political party in a newly formed district does not obtain the requisite number of write-in votes, the candidate may not appear on the ballot as the candidate of that party for the office sought. [s. 8.16 (3), Stats.]

Independent candidates may be nominated only by nomination papers and not by write-in votes. [s. 8.16 (2m), Stats.]

PART III

ADMINISTRATION OF ELECTIONS

To understand the administration of elections in Wisconsin, it is necessary to distinguish the authority and responsibility to administer specific elections from the hierarchical structure of administrative authority over the election process. This Part of the Staff Brief will examine the administrative authority over the election process. This complex administrative structure will be explained by examining the authority and responsibility of the State Elections Board and its staff, and local government agencies, officers and election officials and by briefly describing the role of these agencies, officers and officials in the election process.

STATE ELECTIONS BOARD

ORGANIZATION

The Elections Board consists of persons appointed by the Governor for two-year terms as follows: one member selected by the Governor; one member each designated by the Chief Justice of the supreme court, the Speaker of the Assembly, the Senate majority leader, the minority leader in each house of the Legislature, and the chief officer of each political party qualifying for a separate ballot under s. 5.62 (1) (b) or (2), Stats., whose candidate for governor received at least 10% of the vote in the most recent gubernatorial election. [s. 15.61, Stats.]

The board employs a staff which, with the exception of the Executive Director, is appointed under classified service rules. The Executive Director is appointed outside the classified service and serves as the chief election officer for the state. [s. 5.05 (1) (a), Stats.] All employees of the board must be nonpartisan. [s. 5.05 (4), Stats.]

GENERAL ADMINISTRATIVE DUTIES

The Elections Board is statutorily charged with the general “. . . responsibility for the administration of chs. 5 to 12 and other laws relating to elections and election campaigns.” [s. 5.05 (1) (intro.), Stats.] In the discharge of its duties, the Elections Board is authorized or required to:

a. Investigate violations of election laws upon complaint by any person or on its own motion. In the discharge of its investigative duties, the board is authorized to subpoena persons and records relevant to the investigation and notify the district attorney of the proper county, the Attorney General or the Governor where appropriate of any facts which may be grounds for civil action or criminal prosecution.

b. Bring civil actions to require forfeitures for any violation the campaign finance laws, if the forfeiture actions concern violations with respect to reports or statements required by law to be filed with it, and other violations arising under elections for state office or statewide referenda.

c. 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 or ensure its proper administration.

d. Upon the written request of any interested person, issue a formal opinion with respect to the person's authority or responsibilities under the Elections Code. [chs. 5 to 12, Stats.]

e. Promulgate administrative rules applicable to all jurisdictions for the purpose of interpreting or implementing laws regulating the conduct of elections or election campaigns or ensuring their proper administration.

f. Conduct regular information and training meetings at various locations in the state to explain the election laws, forms and rules of the board to county and municipal clerks and other election officials in order to promote uniform election procedures.

g. Upon written complaint or on its own motion, investigate a local election official who is alleged to have acted or failed to act in conformity with the law 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. Following an investigation, the board is authorized to summarily decide the matter before it and, by order, require an election official to conform his or her conduct to the law, restrain an official taking any action inconsistent with the law or require the official to correct any action or decision inconsistent with the law.

h. Adopt and modify, with approval of the Legislature's Joint Committee on Finance, the state's HAVA plan.

i. Provide financial assistance to counties and municipalities in compliance with the state's HAVA plan.

j. Maintain a toll-free telephone line for electors to report possible voting fraud and voting rights violations, to obtain general election information, and to access information concerning their registration status, polling place locations, and other relevant election information.

k. Administer the campaign financing law. Specific duties are assigned to the Elections Board, under s. 11.21, Stats., with respect to the administration of the campaign financing law, including the administration of the Wisconsin election campaign fund which provides public funding to eligible candidates for statewide and legislative offices. In addition to the facial examination of required reports and statements, the board is required to conduct an audit of reports and statements which are required to be filed with it to determine whether violations of ch. 11 have occurred. [ss. 5.05, 5.06 and 11.21, Stats.]

DUTIES RELATING TO THE ELECTION PROCESS

In addition to the general administrative duties described above, the board has specific responsibilities relating to the election process. [s. 7.08, Stats.] In this regard, the Elections Board is responsible for:

a. Prescribing all necessary official ballot forms and providing one copy of each ballot form without charge to each county and municipal clerk and board of election commissioners and distributing or arranging for the distribution of additional copies.

b. Prescribing the sample blank forms, certificates and ballot containers necessary for the county board of canvassers to report the results of elections for the offices of President and

Vice President, state officials, U.S. Senators and Representatives in Congress, state legislators, justice, court of appeals judge, circuit judges, district attorneys, multi-district municipal judges, metropolitan sewerage commissioners and the results of any county, technical college district or statewide referendum.

c. Prescribing various forms relating to federal overseas voting registration, recording of electors and absentee ballot applications.

d. Promulgating rules for the administration of the statutory requirements for voting machines and electronic voting systems and any other voting apparatus.

The Elections Board is directly involved in the election process for certain offices. The Elections Board serves as the filing officer for nomination papers and certificates of candidacy for: state offices and the offices of the U.S. Senate and Representative in Congress. The Elections Board is also the filing officer for reports and statements required to be filed under the campaign financing law [ch. 11, Stats.] for candidates for state office. [s. 11.02 (1), Stats.]

The Elections Board is also required to publish the election laws and prepare and publish an election manual that explains the duties of the elections officials. The manual must be furnished by the board free to each county and municipal clerk or board of election commissioners. [s. 7.08 (3) and (4), Stats.]

ELECTION ADMINISTRATION COUNCIL

The Election Administration Council was created by 2003 Wisconsin Act 265. The council is to assist the Elections Board in adopting and modifying, as necessary, the state's HAVA plan. The council is created in the Elections Board and consists of members appointed by the executive director of the Elections Board. The membership of the council must include: (1) the clerk or executive director of the board of election commissioners of the two counties or municipalities in the state having the largest population; (2) one or more election officials of other counties or municipalities; (3) representatives of organizations that advocate for the interests of individuals with disabilities; (4) representatives of organizations that advocate for the interests of the voting public; and (5) other electors of the state.

LOCAL GOVERNMENT OFFICERS AND AGENCIES

COUNTY CLERK

The county clerk is responsible for providing ballots for every election in the county and for all national, state and county offices, including metropolitan sewerage commission elections, multi-district municipal judges and for state and county referenda. The county clerk is required to prepare copy for the official ballots, which must be in the form prescribed by the Elections Board, immediately upon receipt of the certified list of candidate names from the Elections Board. Names certified by the Elections Board must be arranged in the order certified. [s. 7.10 (1) (a) and (2), Stats.]

The county clerk is required to distribute the ballots to the municipal clerks no later than 31 days before each September primary and general election and no later than 22 days before each other primary and election. [s. 7.10 (3) (a), Stats.]

The county clerk is also required to provide sufficient election supplies for national, state and county elections. [s. 7.10 (1) (b), Stats.]

County clerks must assist the Elections Board in the training of election officials and must assist the board and municipal clerks in maintaining toll-free telephone lines and other free access systems for voters to report possible voter fraud and voting rights violations, to obtain general election information, and to access information concerning their registration status, current polling place locations, and other information relevant to voting in elections. [s. 7.10 (8) and (9), Stats., as created by 2003 Wisconsin Act 265.]

MUNICIPAL CLERK

Each municipal clerk has general supervisory responsibility over elections and registration in the municipality and the municipal clerk is required to perform any duties that may be necessary to properly conduct elections or voter registration, including:

- a. Equipping voting places.
- b. Providing for the purchase and maintenance of election equipment.
- c. Preparing ballots for municipal elections and distributing ballots and providing other supplies for conducting all elections. A municipal clerk is required to deliver the ballots to the polls before the polls open.
- d. Preparing official absentee ballots for delivery to electors requesting them and mailing an official absentee ballot to each elector who has requested one no later than the 30th day before each September primary and general election and no later than the 21st day before each other primary and election, if the request is made before that day; otherwise, the municipal clerk is required to mail the ballot within one day of the time the elector's request is received.
- e. Preparing write-in absentee ballots for delivery to military electors or overseas electors at each election for national office, no later than the 90th day before the election, or as soon as possible after the offices to be contested at the election are known, whichever is later. The clerk is required to distribute the ballots to each military or overseas elector within one day after a request is received. However, when the official absentee ballots become available, the clerk is precluded from mailing write-in absentee ballots and must substitute official absentee ballots for any write-in absentee ballots requested.
- f. Preparing the necessary notices and publications relating to the conduct of elections or voter registrations.
- g. Instructing election officials in their duties. If the governing body of a municipality has required election officials to prove their ability to read and write English and to have a general knowledge of the election laws, the municipal clerk is required to administer an examination to prove the qualifications can be met. If an electronic voting system is used at a polling place, the clerk must assure that officials who serve at the polling place are familiar with the system and competent to instruct electors in its proper use. The clerk is required to inspect systematically and thoroughly the conduct of elections in a municipality so that elections are honestly, efficiently and uniformly conducted.
- h. Discharging election officials for improper conduct or willful neglect of duties.

- i. Reporting suspected election frauds, irregularities or violations to the district attorney.
- j. Viewing, examining and certifying the sufficiency and validity of petitions and nomination papers.
- k. Directing how and when to destroy the contents of ballot boxes and unused election materials.
- l. Sending an absentee ballot automatically to each person making an authorized request for automatic distribution (i.e., military electors and electors who are indefinitely confined because of age, physical illness or infirmity or disabled for an indefinite period).
- m. Reassigning election inspectors appointed to serve at one polling place to another polling place within the municipality whenever necessary to assure adequate staffing at the polling places. [s. 7.15 (1), Stats.]

Municipal clerks have specific duties relating to municipal elections. Municipal clerks are required to perform the duties prescribed for county clerks as described above. Cities over 500,000 are authorized to prepare their own official and sample ballots. With the consent of the county clerk, any municipality (except a city over 500,000 which prepares its own ballots) may prepare its own ballots whenever voting machines or electronic voting systems are used in elections where candidates for both local offices and national, state or county offices appear on the ballot. Whenever the governing body of any municipality authorizes a question for referendum or whenever a proper recall petition and certificate are filed, the municipal clerk is required to issue a call for the election and prepare and distribute ballots. [s. 7.15 (2), Stats.]

Like county clerks, municipal clerks must assist the Elections Board in the training of election officials and must assist the board and county clerks in maintaining toll-free telephone lines and other free access systems for voters to report possible voter fraud and voting rights violations, to obtain general election information, and to access information concerning their registration status, current polling place locations, and other information relevant to voting in elections. [s. 7.15 (10) and (11), Stats., as created by 2003 Wisconsin Act 265.]

Additionally, each municipal clerk must maintain a free access information system under which an elector who votes after the close of the polls pursuant to a federal court order or who is allowed to vote provisionally because he or she cannot provide required identification at the polling place may determine whether the elector's vote has been counted, and if the vote will not be counted, the reason it will not be counted. [s. 7.15 (12), Stats., as created by 2003 Wisconsin Act 265.] In addition, each municipal clerk is required to make reasonable efforts to comply with requests for voting accommodations made by individuals with disabilities whenever feasible. [s. 7.15 (14), Stats., as created by 2003 Wisconsin Act 265.]

BOARD OF ELECTION COMMISSIONERS

A municipal board of election commissioners and county board of election commissioners must be established in every city and county over 500,000 population (Milwaukee City and County). Each board of election commissioners consists of three members, each member being chosen from lists of at least three names each, selected and approved by the county committee of the two political parties receiving the most votes for governor in the county

in the case of the county board of election commissioners, and receiving the most votes for governor in the city in the case of the city board of election commissioners, in the last general election. The county executive (for the county board of election commissioners) and the mayor (for the city board of election commissioners) is required to select from the list two persons from the majority party and one person from the next highest party in the county or city.

Election commissioners must be qualified electors and residents of the state and county or city. Election commissioners are precluded from holding any other public office and are ineligible for any appointed or elected public office, except the office of notary public, during their four-year term. [s. 7.20, Stats.]

In general, all the powers and duties assigned to the municipal or county clerk are required to be carried out by the municipal or county board of election commissioners or its executive director. The municipal board of election commissioners is required to prepare and furnish copies of all regulations, books, maps and instructions relating to the rules for voter registration and conducting elections for the use and guidance of the election officials. The municipal board of election commissioners is required to complete and publish a biennial report, containing election statistics and returns of all primaries and elections held within the city and county. [ss. 7.21 and 7.22 Stats.]

ELECTION OFFICIALS

INSPECTORS

Number and Qualifications

Except where voting machines are used, seven inspectors (also known as election officials or poll workers) must be appointed for each polling place at each election. Where voting machines are used, only five inspectors are required. The governing body or board of election commissioners of any municipality may by resolution reduce the number of officials, but there may never be less than three. [s. 7.32, Stats.] A municipal governing body may provide by ordinance for the selection of alternate officials or the selection of two sets of officials to work at different times on election day. Additional officials must be appointed in such a manner that the total number of officials is an odd number and the predominant political party is represented by one more official than the other party. [s. 7.30 (1), Stats.]

Election inspectors must meet the following qualifications:

- Generally, election inspectors must be qualified electors of the municipality and the ward served by the polling place to which they are assigned, unless the clerk chooses to reassign them to work in another ward or polling place where they have been appointed to fill a vacancy. Inspectors must be able to read and write the English language, be capable and have a general knowledge of the election laws.
- An election inspector is precluded from being a candidate for any office on the ballot. In first class cities, an election inspector may hold no public office other than a notary public.

- Except when insufficient names have been nominated all inspectors must be affiliated with one of the two recognized political parties that received the largest number of votes in the previous presidential election, or governor in nonpresidential general election years, in the ward or combination of wards served by the polling place at the last election. The party that received the largest number of votes is entitled to one more inspector at each polling place than the party receiving the next largest number of votes. [s. 7.30 (2) and (4) (c), Stats.]
- Generally, a pupil who is 16 or 17 years of age, who is enrolled in grades 9 to 12 in a public or private school, and who has at least a 3.0 grade point average may serve as an inspector at the polling place serving the pupil's residence. Approval of the pupil's parent or guardian and of the school principal is required. There must be at least one qualified elector of the state serving at the polling place for a pupil to be appointed and a pupil may not serve as chief inspector.
- Generally, a person may not serve as a chief inspector at a polling place unless the individual is certified by the Elections Board.

Appointment Process

Except in cities where there is a board of election commissioners (Milwaukee), the mayor, president or chairperson of each municipality nominates to the governing body the necessary election officials for each ward. Appointments are made by the governing body (approval of the nominees) or by the board of election commissioners (direct appointment). [s. 7.30 (4), Stats.]

The two recognized political parties receiving the largest number of votes for president, or governor in nonpresidential general election years, in the ward, or the combination of wards served by the same polling place, at the last election are responsible for submitting a list of names from which the appointees must be chosen. In cities where there is a board of election commissioners (Milwaukee), aldermanic district committeemen or committeewomen from each of the two dominant parties are required to submit a certified list containing the names of at least as many electors as there are inspectors from that party for each of the voting wards in the aldermanic district. In municipalities other than cities and villages located in counties having a population of more than 500,000 (Milwaukee), the chairperson of the appropriate municipal, county or legislative district party committees under s. 8.17, Stats., are required to submit a list containing at least as many names as there are needed appointees from that party. [ss. 7.30 (4) (a) and (b) and 8.17, Stats.]

So long as nominees are made available by the political parties, appointments may be made only from the lists of submitted nominees. If the lists are not submitted by November 30 of the year in which appointments are to be made, or if an insufficient number of nominees appears on the lists as of November 30, the board of election commissioners must appoint, or the mayor, president or chairperson of a municipality must nominate qualified persons to fill the remaining vacancies.

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

Duties

Election inspectors are responsible for the registration or poll lists, handling and endorsing of paper and electronic voting ballots, preserving order at the polling place, adjourning to another polling location if it is impossible or inconvenient to hold an election at the designated location, resolving challenges to voters, serving as the board of canvassers at their polling place and performing other functions necessary for the conduct of an election. A chief inspector, elected by other inspectors prior to the first election following the appointment of the inspectors, is responsible for directing the conduct of activities assigned to the inspectors at the polling place. [ss. 7.30 (6) (b), 7.36 and 7.37, Stats.]

TABULATORS

Not less than 30 days before any election, the governing body or board of election commissioners of any municipality, by resolution, may authorize the municipal clerk or executive director of the board of election commissioners to select and employ tabulators for an election. Tabulators are required to assist and be under the direction of the election inspectors. [s. 7.30 (3), Stats.]

SPECIAL VOTING DEPUTIES

For the purpose of absentee voting in nursing homes, qualified retirement homes and qualified community-based residential facilities, the municipal clerk or board of election commissioners of each municipality in which one or more facilities is located is required to appoint at least two special voting deputies for the municipality. [s. 6.875 (4), Stats.] The deputies are appointed from lists furnished by the appropriate political party committees. [s. 7.30 (4) (b) 1., Stats.] Upon application of one or more qualified electors who are occupants of a nursing home, qualified retirement home or qualified community-based residential facility, the clerk or board of election commissioners is required to dispatch two special voting deputies to visit the facility for the purpose of supervising absentee voting by the occupants. [s. 6.875 (4), Stats.]

SPECIAL REGISTRATION DEPUTIES

The governing body or board of election commissioners of any municipality may provide by resolution that the registration duties normally assigned to election inspectors must be carried out in the municipality by special registration deputies appointed by the municipal clerk or board of election commissioners at any polling place or other registration location whenever the clerk or board of election commissioners determines that the polling place registration process would be facilitated by the appointment of such deputies. [s. 6.55 (6), Stats.] Special registration deputies may be appointed to serve more than one polling place; they need not be a resident of the ward in which they are serving, but they must be a resident of the municipality. [s. 7.30 (2) (a), Stats.]

A municipal clerk or board of election commissioners is also authorized to appoint a special registration deputy for the purpose of registering electors prior to the close of registration. Any qualified elector of the state is eligible for this position and may be appointed by more than one municipal clerk or board of election commissioners to serve in more than one community. [s. 6.26 (2), Stats.]

OTHER ELECTION OFFICIALS

Municipal clerks are authorized to employ a voting machine custodian for the purpose of labeling, setting, adjusting and putting voting machines in order. They may also employ messengers and automatic tabulating equipment technicians.

COMPENSATION OF ELECTION OFFICIALS

A reasonable daily compensation must be paid to each inspector, voting machine custodian, automatic tabulating equipment technician, member of a board of canvassers, messenger and tabulator. Alternatively, such officials may be paid by the hour at a proportionate rate for each hour actually worked. [s. 7.03 (1) (a), Stats.] Generally, compensation must be paid by the municipality in which the election is held, except that any technician, messenger, tabulator or member of the board of canvassers who is employed to perform services for the county must be paid by the county and any messenger or tabulator who is employed to perform services for the state must be paid by the Elections Board. Also, whenever a special election is called by a county or by a special purpose district (i.e., school district, technical college district, sewerage district, a sanitary district or a public inland lake protection and rehabilitation district), the county or district is required to pay compensation of all election officials. [s. 7.03 (1) (bm), Stats.]

If a central counting location serving more than one municipality is utilized, the compensation of election officials at the location must be proportionately divided between the municipalities utilizing the location, except that if all municipalities within a county utilize the location, the compensation must be paid by the county. [s. 7.03 (1) (c), Stats.]

Special registration deputies, special voting deputies and officials and trainees who attend training sessions may be compensated at the option of the municipality. [s. 7.03 (1) (d), Stats.]

The amount of compensation of election officials is required to be fixed by the appropriate county board of supervisors, municipal governing body or municipal board of election commissioners. The Elections Board is required to fix the amount to be paid any person employed to perform duties for the state. If the Elections Board employs an individual to perform duties which are the responsibility of a county or municipality, the board is required to charge the expense to the county or municipality. [s. 7.03 (2), Stats.]

2003 Wisconsin Act 98 directed the Elections Board to prepare recommendations for the Legislature with regard to the compensation of election officials and the establishment of a program for the recruitment of such officials.

TRAINING OF INSPECTORS

The Elections Board is required to establish an administrative rule prescribing requirements for certification of individuals serving as chief inspectors. The requirements may not include taking an examination. In addition, the board must offer regular training programs to ensure that individuals who are certified are knowledgeable about their authority and responsibilities. [s. 7.31, Stats.] 2003 Wisconsin Act 98 directed the Elections Board to prepare recommendations for the Legislature concerning the establishment of a program for the training of election officials and the certification of other election officials not currently required to be certified.

ELECTIONS NOTICES

ELECTION NOTICE FORM

The Elections Board is required to prescribe the form of the various election notices. [s. 10.01 (1), Stats.]

TYPES OF NOTICES

The five types of election notices, which must be published in substantially the same form as prescribed by the Elections Board, are:

Type A--Notice of Election

The Type A notice announces an election. It specifies the date of the election, the offices to be elected, the name of the current incumbent, the length of the term and the expiration date, the beginning date for circulating nomination papers, the deadline for filing nomination papers and the proper place to file the papers. This notice must also contain a statement explaining where information on district boundaries can be obtained. For an election at which a referendum is to be held, the notice must contain the text of the question and a statement explaining where a copy of the resolution directing submission of the question to the voters can be obtained. [s. 10.01 (2) (a), Stats.]

County clerks are required to publish the Type A notice on the fourth Tuesday of November before each spring election and on the first Tuesday of June before a fall election. [s. 10.06 (2), Stats.]

Municipal clerks are required to publish the Type A notice on the fourth Tuesday of November before a spring election in which municipal officers are to be elected. [s. 10.06 (3), Stats.]

The clerk of a special purpose district, such as a school district, is required to publish a Type A notice on the fourth Tuesday of November before a spring election at which district officers are to be elected. [s. 10.06 (4), Stats.]

A Type A notice of a special election or referendum must be published on the fourth Tuesday before the election by the clerk of the jurisdiction calling the election. [s. 10.06, Stats.]

Type B--Facsimile Ballots and Voting Instructions

The Type B election notice contains voting instructions and facsimile ballots. It must specify the date of the election. The notice must include applicable voting instructions for each type of voting system used within the jurisdiction and a copy of each type of ballot to be voted on. In partisan primary elections, the Type B notice must include a ballot for each political party. [ss. 10.01 (2) (b) and 10.02, Stats.]

County clerks are required to publish a Type B election notice on the Monday before each primary and each election for federal, state, and county offices. [s. 10.06 (2), Stats.]

Municipal clerks are required to publish a Type B election notice on the Monday before each primary and each election for municipal offices. [s. 10.06 (3), Stats.]

The clerk of a special purpose district, such as a school district, publishes a Type B election notice on the Monday before each primary and each election for district offices. [s. 10.06 (4) (g), Stats.]

Type C--Notice of Referendum

The Type C election notice contains information regarding referendum elections, including the date of the referendum, the entire text of the question and the proposed enactment, if any, as well as an explanatory statement of the effect of either a “yes” or a “no” vote. For state questions, the explanatory statement is prepared by the Attorney General. For county questions, the explanatory statement is prepared by the county corporation counsel. For other questions, the explanatory statement is prepared by the attorney for the jurisdiction in which the question is submitted. [s. 10.01 (2) (c), Stats.] The Type C notice is published at the same time that the Type B notice is published. The Type C notice must be printed in the newspaper as close as possible to that portion of the Type B notice showing the facsimile referendum ballot. [s. 10.01 (2) (c), Stats.]

Type D--Hours and Locations of Polling Places

The Type D election notice specifies the hours the polls will be open and the polling places to be utilized at the election or includes a concise statement of how polling place information may be obtained. In cities over 500,000 population, the board of election commissioners determines the form of the notice. In other municipalities and special purpose districts, such as a school district, the clerk of the municipality or special purpose district gives the polling place information in the manner the governing body of the municipality or special purpose district decides will most effectively inform the electors.

The Type D election notice must be published by the municipal clerk, board of elections commissioners or special district clerk once on the day before each primary or election. [ss. 10.01 (2) (d) and 10.06, Stats.]

Type E--Absentee Voting

The Type E election notice states the qualifications for absentee voting, the procedures for obtaining an absentee ballot in the case of registered and unregistered voters and the places and deadlines for absentee ballot application and return of application.

Municipal clerks are required to publish the Type E election notice on the fourth Tuesday before a spring primary, spring election, September primary, general election and any special election. The clerk of a special purpose district, such as a school district, which calls a special election, is required to publish a Type E notice on the fourth Tuesday preceding the primary for the special election, if any; on the fourth Tuesday preceding a special referendum; and on the third Tuesday preceding a special election for an office which is not held concurrently with the spring or general election, except as otherwise authorized by statute. [ss. 10.01 (2) (e) and 10.06, Stats.]

PLACE OF PUBLICATION

Election notices may be published only in newspapers qualified under ch. 985, Stats., relating to publication of legal notices, public newspapers and fees.

County clerks are required to publish election notices in all newspapers published within the county that qualify under ch. 985, Stats., unless the county board provides otherwise by resolution. The board of election commissioners or governing body of a municipality may authorize by resolution the publication of election notices in more than one newspaper. Whenever an election notice is required to be published on a specific date and a weekly newspaper is chosen for publication, the notice must appear in the newspaper's closest preceding issue.

POSTING OF ELECTION NOTICES

Whenever an election notice is required to be published, a village, town or school district may post three notices in lieu of newspaper publication whenever there is not a newspaper published within the village, town or school district or whenever the governing body of a village, town or school district chooses to post in order to supplement notice provided in a newspaper. [s. 10.05, Stats.]

PREPARING ELECTION BALLOTS

Municipal clerks and the municipal board of election commissioners in a city over 500,000 population (Milwaukee) are responsible for preparing the ballots for municipal elections. [ss. 7.15 (1) (c) and 7.21 (1), Stats.] County clerks and the county board of election commissioners in a county over 500,000 population (Milwaukee) are responsible for preparing the ballots for every election in the county for all national, state and county offices, including metropolitan sewerage commission elections, multi-district municipal judges and state and county referenda. [ss. 7.10 (1) and 7.21 (1), Stats.]

County clerks and the county board of election commissioners are required to distribute ballots to the municipal clerks and the municipal board of election commissioners no later than 31 days before each September primary and general election and no later than 22 days before any other primary and election. Election blanks prepared by the Elections Board must be distributed at the same time. [s. 7.10 (3) (a), Stats.]

As noted above, official and sample ballots must be prepared in substantially the same form as prescribed by the Elections Board under s. 7.08 (1) (a), Stats. A *Ballot Instruction Manual for Wisconsin* has been prepared by the Elections Board and must be used by county and municipal clerks in determining the proper ballot formats. The arrangement of names of

candidates on a ballot for a particular office are determined by drawing lots according to a statutory schedule. The first drawing is held no later than seven days after the deadline for filing nomination papers. Following the primary for any office, the names must be redrawn within three days following the completion of the primary canvass to determine the arrangement of candidates on the election ballots. [ss. 5.60 (1) (b) and 5.62 (3), Stats.]

Although the Elections Board has general responsibility for prescribing official ballot forms and necessary standard sample ballots, specific statutory provisions provide guidance to the Board in carrying out this responsibility. [ss. 5.51 to 5.66, Stats.] The statutory requirements are reflected in the *Ballot Instruction Manual for Wisconsin*. In addition to containing a complete set of sample ballots for all elections, the manual sets forth:

- Basic ballot preparation requirements, including the size of the ballot, color of ballot, requirements relating to sample ballots, notice requirements, requirements relating to candidates' names, offices that appear on the ballot and other information.
- Requirements relating to printing and delivery of ballots, including a timetable for the delivery of completed ballots to the appropriate clerks (i.e., at least 22 days before the date of the spring primary and election and any special election and at least 31 days before the September partisan primary and general election). [s. 7.10 (3) (a), Stats.]
- Miscellaneous comments on preparing ballots, including instructions for preparing special election ballots and referendum ballots.

TYPES OF BALLOTS

There are three types of ballots used in Wisconsin: paper, machine and electronic. Subject to several narrowly drawn statutory exceptions, every municipality with a population of 7,500 or more is required to use a voting machine or an electronic voting system in every ward in the municipality at every election. [s. 5.40 (1), Stats.] Municipalities with a smaller population are permitted to adopt and purchase voting machines or an electronic voting system for use in any ward in the municipality at any election. [s. 5.40 (1), Stats.] Voting machines and electronic voting systems must comply with requirements set forth in ss. 5.37 and 5.91, Stats. [s. 5.40 (2), Stats.]

No ballot or voting device, automatic counting equipment or related equipment and materials to be used in an electronic voting system may be utilized unless it is approved by the Elections Board, and an electronic voting system and its components must meet specific statutory requirements before it may be approved by the Elections Board. [s. 5.91, Stats.] 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 statute and approved by the Elections Board 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 and in combination with mechanical voting machines, or in combination with paper ballots where such ballots are authorized to be used. [s. 5.76, Stats.] Before entering into a contract for the purchase or lease of an electronic voting system or its components, a 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, preventative maintenance or emergency repair services, training or the provision of educational material and such other guarantees as the municipality determines is appropriate. [s. 5.92, Stats.] Specific statutory requirements relating to electronic voting systems are set forth in subch. III of ch. 5, Stats.

VOTING AT A POLLING PLACE

POLLING PLACE REQUIREMENTS

So far as practicable, polling places must be in public buildings. [s. 5.25 (1), Stats.] In cities over 500,000 population (Milwaukee), the municipal board of election commissioners is required to establish polling places. In all other cities, villages and towns, the municipal governing body establishes polling places. [s. 5.25 (2), Stats.]

Every polling place must be accessible to elderly and handicapped individuals unless exempt in accordance with the guidelines prescribed by rule of the Elections Board. [s. 5.25 (4), Stats.] Unless a polling place serves more than one ward or a particular elector is reassigned to a polling place that is accessible to elderly or handicapped individuals, all electors within a ward are required to vote at the same polling place. [s. 5.25 (5), Stats.]

A polling place must be equipped with one voting booth for every 200 electors who voted at the last general election. All voting booths and machines must be placed apart from other activities in the polling place and their exteriors must be in full view of election officials. Other statutory requirements for polling places relate to the number and condition of ballot boxes, restrictions of activities at polling places and posting requirements for voting instructions and information regarding election fraud. [s. 5.35, Stats.]

Any person entitled to vote at an election is entitled to be absent from work for up to three successive hours in order to vote at the proper polling place. [ss. 6.76 (1) and 6.77 (1), Stats.]

The times when polls must be open for various classes of cities, villages and towns are specified by statute. Generally, polls open at 7 a.m. in first, second and third class cities, and 9 a.m. in other municipalities and remain open until 8 p.m. Any elector waiting to vote, whether within the polling booth or in the line outside the booth at the time the polls officially close, must be allowed to vote. [s. 6.78, Stats.]

RECORDING ELECTORS

Two election officials at each election ward must be placed in charge of and maintain two separate lists of all persons voting. Where registration is not required before being permitted to vote, each elector must state his or her full name and address. The officials must record the elector's name and address on a poll list in the same order that the votes are cast. Alternatively, each municipal clerk may maintain a poll list consisting of the full name and address of the electors compiled from previous elections. Whenever an elector appears, the officials are required to verify the correctness on the elector's name and address and enter the serial number next to the name of the elector in the order that the votes are cast. Officials may require any elector to provide identification, including applicable proof of residence, or to have another

elector corroborate his or her information in accordance with the procedures specified in s. 6.55 (2) (b), Stats., relating to registration at the polling place, before permitting the elector to vote. [s. 6.79 (1), Stats.]

Where voter registration is required, each elector, before receiving a voting number, is required to state his or her full name and address. First-time voters in a jurisdiction who registered by mail are required to provide identification when appearing at the polls to vote in a federal election. Acceptable identification is either: (1) a current and valid piece of identification containing a photograph of the elector; or (2) a copy of a utility bill, bank statement, paycheck, or a check or other document issued by a unit of government that shows the current name and address of the elector. [ss. 6.36 (2) (c) and 5.02 (6m), Stats.] Upon the prepared registration list, after the name of each elector, the official is required to enter the serial number of the vote as it is polled. The elector must be given a slip bearing the same serial number. [s. 6.79 (2), Stats.]

2003 Wisconsin Act 265 establishes a centralized statewide voter registration list that is to be designed and maintained by the Elections Board. The use of the list first applies to the Spring 2006 Primary.

If any elector offering to vote at any polling place refuses to give his or her name and address, the elector may not be permitted to vote. [s. 6.79 (3), Stats.]

MECHANICS OF VOTING

Only one individual at a time is permitted to occupy a voting booth or machine, except that an elector who is a parent or guardian may be accompanied by the elector's minor child or minor ward and an elector who qualifies for assistance may be assisted as provided under s. 6.82 (2), Stats. [s. 6.80 (1), Stats.] The method of voting is delineated in s. 6.80 (2), Stats. That subsection addresses matters such as using or copying an unofficial sample ballot, write-in voting, folding the ballot, receiving additional ballots if the elector spoils the ballot, discarding unused ballots in the presidential preference primary and other partisan primary elections and similar topics. [s. 6.80 (2), Stats.]

ASSISTING ELECTORS

When an election inspector is informed that an elector is unable to enter the polling place as a result of a disability or that he or she cannot read or write, or has difficulty in reading, writing or understanding English or that due to disability is unable to mark or punch a ballot or depress a button or lever on a voting machine, the inspector must permit the elector to be assisted in casting the ballot by an individual selected by the elector. The person selected to provide assistance may not be the elector's employer or an agent of that employer or an officer or agent of a labor organization which represents the elector. The process of assisting an elector under these circumstances is set forth in s. 6.82 (1), (2) and (3) Stats.

VOTING ABSENTEE

GENERAL REQUIREMENTS

An absent elector is any otherwise qualified elector who, for any reason, is unable or unwilling to appear at the polling place in his or her ward. In addition, a qualified elector who changes residence within the state by moving to a different ward or municipality later than 10 days prior to an election may vote an absentee ballot in the ward or municipality where he or she was qualified to vote before moving. [s. 6.85, Stats.]

PROCEDURE

An elector who qualifies as an absent elector may make written application to the municipal clerk or municipal board of election commissioners for an official ballot by one of the following methods:

- a. By mail.
- b. In person at the office of the municipal clerk.
- c. By signing a statement that he or she is indefinitely confined because of age, physical illness, or infirmity or is disabled for an indefinite period (thereby qualifying to have an absentee ballot sent to the elector automatically for every election).
- d. By agent if the elector is hospitalized.
- e. By delivering an application to a special voting deputy if the election is a resident of a nursing home, retirement home, or certain community-based residential facilities. [s. 6.86, Stats.]

An elector who is unable to write his or her name due to physical disability may authorize an application to be made by another elector on his or her behalf. [s. 6.86 (1) (ag), Stats.]

With certain exceptions for particular absentee electors, such as sequestered jurors, hospitalized and military electors, a written application for an absentee ballot may be received no sooner than the first day of the sixth month commencing before the election nor after 5 p.m. on the Friday immediately preceding the election. [s. 6.86 (1) (b), Stats.] Special procedures and time requirements apply to sequestered jurors, indefinitely confined electors, hospitalized electors, military electors, overseas electors and residents of nursing homes. [ss. 6.86 (1) (b), (2) and (3), 6.22, 6.24 and 6.875, Stats., respectively.]

To facilitate voting by residents of nursing homes, qualified retirement homes or qualified community-based residential facilities, the municipal clerk or board of election commissioners of each municipality in which one or more of these facilities are located must appoint at least two special voting deputies affiliated with different political parties, if available. Special voting deputies in each municipality are required, not later than 5 p.m. on the Friday preceding an election, to arrange one or more convenient times with the administrator of each facility to conduct absentee voting for the election. The timing may be no earlier than the fourth Monday preceding the election and no later than 5 p.m. on the Monday preceding the election. Upon visiting the facility at the designated time, the deputies are required to administer the oath and may, upon request of the elector who is requesting to vote absentee, assist the elector in

marking or punching the elector's ballot. Upon request of the elector, a relative of the elector who is present in the room is also permitted to assist the elector in marking or punching the elector's ballot, but all voting must be conducted in the presence of the deputies. Upon completion of the voting, the deputies are required to promptly deliver, either personally or by first class mail, any absentee ballot applications and the sealed certificate–affidavit envelope containing each ballot to the clerk or board of election commissioners of the municipality in which the elector casting the ballot resides, within such time as will permit delivery to the polling place serving the elector's residence on election day. [s. 6.875, Stats.]

Generally, the municipal clerk is required to mail, return postage prepaid, an absentee ballot to an applicant, or deliver it personally to the applicant at the clerk's office. When mailed, the ballot must be sent to the applicant's residence, unless otherwise directed. An absentee ballot may also be faxed to an applicant. However, a ballot may not be transmitted to an address of a candidate, political party, or other campaign finance registrant unless such address is the permanent or temporary residence of the applicant. [s. 6.87 (3), Stats.]

A person who registered by mail and who has not previously voted in an election in the jurisdiction and who seeks to vote in a national election by absentee ballot must provide a copy of either of the following forms of identification with his or her ballot: (1) a current and valid piece of identification containing a photograph of the elector; or (2) a copy of a utility bill, bank statement, paycheck, or a check or other document issued by a unit of government that shows the current name and address of the elector. [ss. 6.87 (4) and 5.02 (6m), Stats.]

VOTING AND RECORDING THE ABSENTEE BALLOT

When an absentee ballot arrives at the office of the municipal clerk or board of election commissioners, it must be placed, unopened in a carrier envelope that is securely sealed and endorsed with the name and official title of the clerk. On election day, absentee ballots are delivered to polling places in carrier envelopes or containers before the polls close. [s. 6.88 (1) and (2), Stats.]

Election inspectors may process absentee ballots anytime after the ballots are received at the polling place or immediately after the polls close. Upon opening the carrier envelope, the inspectors announce the name of the person voting absentee to provide an opportunity for challenge. If the absentee ballot certification has been properly completed, the elector is a qualified elector and the applicant has not previously voted in the election, the inspectors deposit the ballot in the proper ballot box and enter the absent elector's name or voting number after his or her name on the poll list the same as if the elector had been present and voted in person. [s. 6.88 (3) (a), Stats.]

If an absentee ballot is rejected for any of the statutorily prescribed reasons for rejection, election inspectors may not count the ballot and must endorse on the back of the ballot "rejected" and state the reason for rejection. Rejected absentee ballots are placed in a carrier envelope, for return to the municipal clerk or board of election commissioners after the polls close. [s. 6.88 (3) (b), Stats.]

TALLYING BALLOTS

COUNTING BALLOTS

Election inspectors are responsible for counting ballots. Prior to commencing the process of counting ballots, the inspectors must compare and reconcile the two voter registration or poll lists. Mistakes must be corrected until the poll or registration lists agree. [s. 7.51 (2) (a), Stats.]

Detailed statutory procedures dictate the process of counting paper ballots, machine votes and votes cast using an electronic voting system (punch card ballots and optical scan ballots). The statutory procedures which are set forth in ss. 5.85, 5.86, 5.87 and 7.51 (2), Stats., are supplemented by an *Election Day Manual for Wisconsin Election Officials*, prepared by the Elections Board, which contains a step-by-step guide to the tally process. In any municipality where an electronic voting system is used, the municipal governing body or board of election commissioners may provide or authorize the municipal clerk or executive director of the board of election commissioners to provide for the adjournment of the canvass to one or more central counting locations for specified polling places. [ss. 5.86 and 7.51 (1), Stats.]

An important responsibility of election inspectors in the process of counting ballots is determining elector intent. All ballots cast at an election which bear the initials of two inspectors must be counted for the person or referendum question for whom or for which they were intended, so far as the elector's intent can be ascertained from ballots notwithstanding informality or failure to comply with provisions of election law. Rules to follow in determining voter intent are set forth in s. 7.50, Stats., and in the *Election Day Manual for Wisconsin Election Officials*.

COMPLETING AND SECURING ELECTION DAY MATERIALS

After ballots have been counted and the votes recorded on appropriate tally sheets, election forms must be completed and all materials secured and routed to the appropriate clerk or board of election commissioners. [s. 7.51, Stats.] According to the *Election Day Manual for Wisconsin Election Officials*, this process of completing and securing election day materials requires:

- a. Sorting all counted ballots by type. Ballots that have been identified as defective, damaged, objected to, or set aside must be bundled separately.
- b. Placing all voted ballots along with the original ballots envelope into a ballot bag or container and sealing it.
- c. Placing in separate ballot bags: federal, state and county ballots; municipal ballots; school district ballots; school district referenda; and other special district ballots. The chief inspector and two other inspectors must sign the certificate on the ballot bag or ballot container and seal each ballot bag or container properly. Where optical scan ballot cards are used, the memory pack must be sealed in a separate ballot bag.
- d. Placing rejected absentee ballot envelopes in a brown carrier envelope. The certificate on the carrier envelope must be signed by the chief inspector and two other inspectors.
- e. Placing used absentee certificate–affidavit envelopes in a white carrier envelope. The certificate on the carrier envelope must be signed by the chief inspector and two other inspectors.

f. Completing the inspector's statement which lists all blank, challenged, damaged, defective, objected to, provisional, and rejected ballots. The statement must also list the total number of voters, the number of absentee voters, and the number of provisional voters.

g. Recording on the incident log of the inspector's statement the serial number, description of the incident, time of the incident, and inspectors' initials for each blank ballot, damaged ballot, defective ballot, objected to ballot, or other occurrence or irregularity.

h. Completing the certificate on the cover sheet of the duplicate inspector's statements listing, the ward or wards served by the polling place, the municipality, the county, the election date, the total number of voters, the number of absentee voters, and the number of provisional voters.

The chief inspector and two other inspectors, one from each party, must sign the inspector's statement.

CANVASSING ELECTION RESULTS

MUNICIPAL CANVASS

Where the municipality constitutes one ward or combines all wards to utilize a single polling place, the election inspectors act as the municipal board of canvassers. Where a municipality utilizes more than one polling place, the board of canvassers consists of the municipal clerk and two other qualified electors of the municipality appointed by the clerk. In cities of more than 500,000 population (Milwaukee), the board of election commissioners serves as the board of canvassers. [s. 7.53 (1) and (2) (a) and (c), Stats.]

The municipal board of canvassers is required to publicly canvass the returns of every municipal election. The canvass must begin within 24 hours after the polls close. The board of canvassers must prepare a statement showing the results of the election. [s. 7.53 (2) (d), Stats.]

In a common, union high or unified school district, the school district clerk is required to appoint two qualified electors of the school district prior to the date of the election being canvassed to serve, with the school district clerk, as the school district board of canvassers. If the school district clerk is a candidate at the election being canvassed, the other two members of the board of canvassers must designate a third member to serve in lieu of the clerk for that election. The board of canvassers is required to prepare a written statement showing the numbers of votes cast for each person for each office and for and against each referendum question and must prepare a determination showing the names of the persons who are elected to the school board and the results of any school district referendum. In a first class city school district, the municipal board of canvassers or election commissioners must determine the results of school district elections and referenda and must file a written statement and determination of results for each election and referendum in the office of the city clerk or board of election commissioners. [s. 7.53 (3), Stats.]

COUNTY CANVASS

The county clerk and two qualified electors of the county appointed by the clerk constitute the county board of canvassers. Not later than 9 a.m. on the Thursday after each

election, the county board of canvassers is required to open and publicly examine the returns. The board of canvassers is required to 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; state legislators; justice; court of appeals judge, circuit judges; district attorneys; multi-district municipal judges; and metropolitan sewerage commissioners, if elected. The board of canvassers must also prepare a statement showing the results of any county, technical college district or statewide referendum.

The county board of canvassers must also prepare written determinations giving the names of the persons elected to any county office and showing the results of any county referendum.

In preparing the statements and determinations, the board of canvassers is required to carefully review the tally sheets and inspectors' statements. If any votes are rejected, the board of canvassers must specify the reasons for the rejection. Each statement and determination must be certified as correct and attested to by each canvasser's signature.

Immediately following the canvass, the county clerk must deliver or send to the Elections Board, by first class mail, a certified copy of each statement of the county board of canvassers for President and Vice President; state officials; Senators and Representatives in Congress; state legislators; justice; court of appeals judge; district attorneys; multi-district municipal judges; and metropolitan sewerage commissioners. [s. 7.60, Stats.]

STATE CANVASS

Upon receipt of the certified statements of county clerks, the Elections Board is required to record the election results by counties and file and carefully preserve the statements.

The Board of State Canvassers consists of the Chairperson of the Elections Board, State Treasurer and Attorney General. It is attached to the Elections Board for administrative purposes. [s. 15.615 (1), Stats.] The Board of State Canvassers is required to examine the certified statements of the county boards of canvassers. When the certified statements and returns are received, the Board of State Canvassers is required to proceed to examine and issue statements regarding the total number of votes cast at any election for the offices involved in the election. The Elections Board must record in its office each certified statement and determination of election made by the Board of State Canvassers. For presidential electors, the Elections Board must prepare a certificate showing the determination of the results of the canvass and the names of the persons elected. [s. 7.70 (3), Stats.]

RECOUNT

Any candidate voted for at any election or any elector who voted upon any referendum question at any election may request a recount. The person seeking the recount is required to file a verified petition accompanied by the appropriate fee, if any, with the clerk or body with whom nominations papers are filed for that office. In the event of a recount involving a referendum, the petition must be filed with the clerk of the jurisdiction on which the referendum is called, and in the case of a statewide referendum, with the Elections Board. [s. 9.01 (1) (a), Stats.]

The Elections Board is required to prescribe standard forms and procedures for the making of recounts. [s. 9.01 (10), Stats.]

A recount petition may be filed no earlier than the time of completion of the canvass and no later than 5:00 p.m. on the third business day following the last meeting day of the municipal or county board of canvassers determining the election for the office or referendum question or, if more than one board of canvassers makes a determination, no later than 5:00 p.m. on the third business day following the last meeting day of the board of canvassers which makes a determination. If the Board of State Canvassers makes the determination, the petitioner may file the petition no earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and no later than 5:00 p.m. on the third business day following the day on which the Elections Board receives the last statement from the county board of canvassers for the election or referendum. [s. 9.01 (1) (a), Stats.]

A recount petition must state the following: (a) that at the election, the petitioner was a candidate for the office in question or that he or she voted on the referendum question at issue; (b) that the petitioner is informed and believes that a mistake or fraud has been committed in the specified ward or municipality in the counting and return of the votes cast for the office or the question; or (c) that another defect, irregularity, or illegality in the conduct of the election occurred. The petition must also specify each ward, or each municipality where no wards exist, in which a recount is desired. [s. 9.01 (1) (a), Stats.]

At the time of receiving a recount petition, the clerk or body receiving the petition is required to calculate or estimate the requisite recount fee that is due. The fee must be paid at the time of the filing of the petition. The applicable fee is based upon the vote differential between the leading candidate and the petitioner or between the affirmative and negative votes cast upon a referendum question. The fee schedule is as follows:

- a. If the vote difference is less than 10 when 1,000 or fewer votes are cast, or not more than .5% if more than 1,000 votes are cast, no fee is due.
- b. If the vote difference is at least 10 when 1,000 or fewer votes are cast or is more than .5%, but not more than 2% when more than 1,000 votes are cast, the fee is \$5 per ward recounted (or \$5 for each municipality where no wards exist).
- c. If the vote difference is more than 2% when more than 1,000 votes are cast, the fee equals the actual costs of performing the recount.

The balance of any fee estimated based upon the actual costs of a recount is due within 30 days after the clerk provides the petitioner with a written statement of the actual amount due. If the petitioner has overpaid, the clerk must refund the amount overpaid within 30 days after the board of canvassers makes its determination in the recount. [s. 9.01 (1) (ad) and (ag), Stats.]

When the recount concerns an office, the clerk or body with whom the petition is filed must promptly prepare a copy of the petition for delivery to each opposing candidate for the same office whose name appears on the ballot. In a recount for a partisan primary, the clerk or body with whom the petition is filed must prepare a copy of the petition for delivery to each opposing candidate for the same party nomination for the same office, to each opposing

candidate for the party nomination of each other party for the same office and to each independent candidate qualifying to have his or her name placed on the ballot for the succeeding election. A candidate or an agent designated by a candidate may personally accept delivery of a copy of the petition. Upon personal acceptance, the candidate or agent must sign a receipt for the delivery. If a candidate or agent does not personally accept delivery, the sheriff, must promptly serve copies of the petition to each candidate at the address given on the candidate's nomination papers, without fee. [s. 9.01 (2), Stats.]

The petitioner, all opposing candidates, and interested persons are entitled to be present in person or by counsel to observe the recount proceedings. [s. 9.01 (3), Stats.]

When a valid petition and the required fee is received, the proper board of canvassers is notified. Generally, the board of canvassers must convene for the recount no earlier than 9:00 a.m. on the day following delivery of the recount notice to all candidates and no later than 9:00 a.m. on the day following the last day for filing a recount petition. [s. 9.10 (1) (ar) 3., Stats.]

The recount process, which is specified in s. 9.01 (1) (b), Stats., is to proceed as follows:

a. First, the board of canvassers must compare the poll lists and determine the number of voting electors.

b. The board of canvassers must next examine the absentee ballot envelopes. Defective envelopes are to be laid aside, properly marked, and carefully preserved. The number of voters must be reduced by the number of envelopes set aside. [An absentee ballot is considered "defective" only if it is not witnessed, if it is not signed by the voter, or if the certificate accompanying an absentee ballot that the voter received by fax transmission or email is missing.]

c. Next, the board of canvassers must examine the container of ballots to be certain that it has not been tampered with, opened, or opened and resealed. Any irregularities or possible tampering must be noted.

d. After the container has been checked, the board of canvassers must open it and remove its contents. The number of ballots must be counted without examining the votes. For each defective absentee ballot envelope laid aside, the board of canvassers must randomly, and without inspecting the vote, draw one absentee ballot from the container. [The law presumes that ballots in the container initialed only by the municipal clerk, executive director of the board of election commissioners, or a deputy clerk or secretary is an absentee ballot.] If there are more defective absentee ballot envelopes than there are probable absentee ballots in the container, all of the probable absentee ballots must be removed. Additional ballots are to be removed only if the number of remaining ballots still exceeds the number of voters reduced by the number of defective absentee ballots set aside. Removed ballots may not be counted and must be marked with the reason for their removal, set aside, and carefully preserved.

If the number of ballots still exceeds the number of voters, the board of canvassers must place all of the ballots face up to check for blank ballots. If blank ballots are found, they must be marked as such, set aside, and carefully preserved. If the number of ballots still exceeds the number of voters, the board of canvassers must then place all of the ballots face down to check the initials. Any ballots not properly initialed by election officials are to be temporarily set aside and ballots randomly drawn so as to reduce the number of ballots to equal the number of voters.

Ballots removed for lack of the requisite initials are to be marked, set aside, and carefully preserved.

If the number of ballots still exceeds the number of voters, the remaining ballots must be returned to the container and the excess number of ballots must be randomly withdrawn from the container. These ballots may not be counted and must be marked, set aside, and carefully preserved.

When the number of ballots and voters agree, or after noting that the number of voters exceeds the number of ballots, the board of canvassers must place the ballots back into the ballot box and must turn the box to thoroughly mix the ballots. At this point, the recount may begin.

Generally, the recount is to be conducted according to the procedures governing the original canvass. In recounting the votes cast on a voting machine in which the record of the votes cast is contained in the machine, the board of canvassers must make a record of the number of the seal, if any, the number of the protective counter or other device, if one is provided, and must then open the recording compartment of the machine and, without unlocking the machine against voting, recount the votes on the machine. If the machine is an electronic machine utilizing a detachable record of votes cast, the record must be retabulated under s. 5.90, Stats.

When a machine is recounted, the board of canvassers must inspect and examine the machine showing the votes cast and make a record of the votes as shown on the machine. This must be done in the presence of at least one witness. If the recount establishes that the original canvass from a machine was correct but that a discrepancy still remains, the board of canvassers must publicly unlock the voting and counting mechanism of the machine and must examine and test the machine to determine the cause of the discrepancy. A similar test must be conducted on electronic voting machines to determine whether the machine has a malfunction. A statement explaining the results of the test must be prepared by the board of canvassers and witnessed by at least one witness.

In the case of voting machine or electronic voting system and a clearly apparent error in the vote total shown on the machine or system, the board of canvassers may change the vote total and may certify or use a different vote total to certify a different result if there is evidence of a specific malfunction in the machine or system, if the malfunction could reasonably have caused the error, and if clear and convincing evidence exists which indicates the exact actual total number of votes cast. The burden to demonstrate that a vote total shown on a machine or record of votes cast is incorrect rests with the party seeking to change the recorded result on the basis of clear and convincing evidence.

If the recount shows that the original canvass was incorrect, the statement and determinations of the board of canvassers must be corrected accordingly.

Recounts at polling places utilizing an electronic voting system in which ballots are distributed to electors must generally be performed in accordance with the procedures for recounting paper ballots, to the extent applicable. Generally, recounts at polling places using electronic voting machines must be performed in accordance with the procedures for recounting votes cast on mechanical voting machines.

All steps of a recount must be performed publicly. Generally, all materials and ballots may be viewed and identified by the candidate, the person demanding the recount, and their authorized representatives and counsel. However, only members of the board of canvassers and tabulators assisting them may actually touch any of the materials or ballots. The candidates, the person demanding the recount, and their authorized representatives and counsel may object to the counting of any ballot. Any errors must be corrected. [s. 9.01 (1) (b), Stats.]

Whenever a recount petition for part of the wards within a jurisdiction or district, or for part of the municipalities within a district where there are no wards, is filed, the opposing candidate, or any voter or other interested party, including a municipality if the recount concerns a referendum question, is permitted to file a petition for recount in any or all of the remaining wards or municipalities in the jurisdiction or district. The petition must be filed no later than 5:00 p.m. two days after the board of canvassers completes the first recount. [s. 9.01 (4), Stats.]

The board of canvassers is required to keep complete minutes of all recount proceedings. The minutes must include a record of objections and offers of evidence. If the board of canvassers receives exhibits from any party, the exhibits must be numbered and preserved. The board of canvassers must make specific findings of fact with respect to any irregularity raised in the petition or discovered during the recount. Any member of the board of canvassers may administer oaths, certify official acts, and issue subpoenas for purposes of the recount. Witness fees are to be paid by the county, or by the Elections Board in the case of a state recount. [s. 9.01 (5) (a), Stats.]

The board of canvassers conducting a recount may select and employ tabulators to assist in the recount. However, only the members of the board of canvassers may make any determination as to the validity of any vote counted. [s. 9.01 (5) (b), Stats.]

Upon completing the recount, the board of canvassers must deliver to the Elections Board one copy of the minutes from the recount. In addition, in the case of a recount of an election for a state or national office, the board of canvassers must deliver one copy of the minutes to the state committee of the political party for each candidate whose name appears on the ballot for the recounted office. If the recount is of an election for county office, the board of canvassers must provide a copy of the minutes to each county political party of each candidate whose name appears on the ballot for the recounted office. [s. 9.01 (5) (bm), Stats.]

If the recount is made by a municipal or county board of canvassers and the result is required to be reported to a county board of canvassers or to the Elections Board, the board of canvassers making the initial recount must immediately certify the results to the county board of canvassers or to the Elections Board. If a county board of canvassers receives such results, it must then convene no later than 9:00 a.m. on the next business day following receipt to examine the returns and determine the results. If the Elections Board receives such results, the returns must be publicly examined and the results determined not later than 9:00 a.m. on the third business day following receipt, but if that day is earlier than the latest day permitted for the state canvass for that office, the chairperson of the board may examine the returns and determine the results no later than the day permitted for the state canvass for that office. [s. 9.01 (5) (c), Stats.]

Within five business days after completion of a recount, any candidate, or any elector when for a referendum, aggrieved by the recount may appeal to circuit court. The appeal is commenced by serving a written notice of appeal to the other candidates and persons who filed a

written notice of appearance before each board of canvassers whose decision is appealed, or in the case of a statewide recount, before the Elections Board. The appealing party must also serve notice on the Elections Board if the board is responsible for determining the election. The notice must be served by certified mail or in person and must be filed with the clerk of circuit court. A surety in the amount approved by the court, conditioned upon the payment of all costs taxed against the appealing person, must also be filed. [s. 9.01 (6) (a), Stats.]

If an appeal is filed from a recount determination in an election which is held in more than one judicial circuit, the chief judge of the judicial administrative district in which the election is held must consolidate all appeals relating to that election and appoint a circuit judge to hear the appeal. If the election is held in more than one judicial administrative district, the Chief Justice of the Supreme Court must make the appointment. [s. 9.01 (6) (b), Stats.]

When an appeal is filed, the court must immediately direct each affected county or municipal clerk to transmit all ballots, papers, and records affecting the appeal to the clerk of court, or to impound and secure such materials, or both. [s. 9.01 (7) (a), Stats.]

The appeal is heard by a judge without a jury. Following filing of an appeal, the court must promptly hold a scheduling conference to adopt procedures permitting it to determine the matter as expeditiously as possible. Within the time ordered by the court, the person who filed the appeal must file a complaint listing with specificity every alleged irregularity, defect, mistake, or fraud committed during the recount. Within the time ordered by the court, the other parties to the appeal must file an answer and all the parties to the appeal must provide the court with any other information ordered by the court. The matter is to be summarily heard and determined by the court. Provisions of the law relating to civil procedure which are inconsistent with a prompt and expeditious hearing do not apply to recount appeals. [s. 9.01 (7) (b), Stats.]

Unless the court finds reason for setting aside or modifying the recount determination, it must uphold the determination. Generally, the court may not receive evidence not offered during the recount, except for evidence that was unavailable to a party at the time of the recount or newly discovered evidence that could not have been obtained during the recount. However, the court may receive evidence not offered at an earlier time because a party was not represented by counsel in all or part of a recount proceeding. A party who fails to object or fails to offer evidence of a defect or irregularity during the recount waives the right to object or to offer evidence to the court except in the case of evidence that was previously unavailable or newly discovered evidence or evidence received by the court due to unavailability of counsel during the recount.

The court must set aside or modify the recount determination if it finds that the board of canvassers erroneously interpreted a provision of law and the correct interpretation compels a particular action. If the determination depends on any fact found by the board of canvassers, the court may not substitute its judgment for that of the board of canvassers as to the weight of the evidence on any disputed finding of fact. The court must set aside the determination if it finds that the determination depends on any finding of fact that is not supported by substantial evidence. [s. 9.01 (8), Stats.]

Within 30 days after entry of the order of the circuit court, an aggrieved party may appeal to the court of appeals. If an appeal is filed with respect to an election which is held in more than

one court of appeals district, the Chief Justice of the Supreme Court must consolidate all appeals relating to that election and designate one district to hear the appeal, except that if an appeal is filed in respect to an election for statewide office or statewide referendum, the appeal must be heard by the 4th District Court of Appeals in Madison. The court of appeals must give precedence to the appeal over other matters not accorded similar precedence by law. [s. 9.01 (9), Stats.]

The above-described recount procedures constitute the exclusive judicial remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect, or mistake committed during the voting or canvassing process. [s. 9.01 (11), Stats.]

ELECTION COSTS

The cost of operating the election system is largely borne at the county and municipal levels. The Elections Board prescribes ballots, for example, but the cost of printing them or purchasing or maintaining voting machines or electronic voting systems is a local expense. The following chart, prepared by the Elections Board staff (dated August 29, 2000), provides a summary of election expenses and indicates who is responsible for paying the expense.

Cost of Elections		
Notices	Who's Responsible	Who Pays
Type A	Clerk of Jurisdiction	Jurisdiction
Type B	Clerk of Jurisdiction	Can be prorated proportionately if notice is combined with other jurisdictions
Type C	Clerk of Jurisdiction	Jurisdiction
Type D	Municipal Clerk	Municipality
Type E	Municipal Clerk	Can be prorated proportionately if notice is combined with other municipalities
Polling Place Notices, i.e. Election Fraud Notice, Notice of Crossover Voting	Municipal Clerk	Municipality
Ballots	Who's Responsible	Who Pays
Marksense	County Clerk for state, federal, and county offices Municipal clerk for municipal offices School district clerk for school district offices	Prorated proportionately between jurisdictions
Punch card		
Lever machine strips and Direct Record Labels		
Paper	Clerk of Jurisdiction	Jurisdiction
Absentee ballot mailing envelopes and postage	Municipal Clerk	Municipality
Supplies	Who's Responsible	Who Pays
Tally Sheets, Inspectors' Statements, Poll Lists, etc	See page 9 of <u>Election and Campaign Manual for County and Municipal Clerks</u> , June 1996	Jurisdiction required to provide materials
Labor	Who's Responsible	Who Pays
Election Inspectors, Tabulators, Special Voting Deputies, Special Registration Deputies	Municipal Clerk	Municipality for all regularly scheduled primaries and elections* or Jurisdiction calling special election
Board of Canvassers, Tabulators	Clerk of Jurisdiction requiring canvass	Jurisdiction requiring canvass

Cost of Elections		
Labor	Who's Responsible	Who Pays
Messengers	Municipal Clerk when delivering materials to county or school district	Municipality
	Clerk of County or School District when delivering materials back to municipality	Jurisdiction delivering materials
Equipment	Who's Responsible	Who Pays
Voting machines/systems, ballot boxes, voting booths, pens, pencils	Municipal Clerk	Municipality
Set-up of machines (moving machines from one place to another)	Municipal Clerk	Municipality
Maintenance of machines (making sure machines keep working or repairing when it breaks down)	Municipal Clerk	Municipality
Preparation for electronic voting systems (the programming to make machine count ballots)	Municipal Clerk	Prorated proportionately between jurisdictions
Preparation of lever machines (whatever it takes to make machine count ballots)	Municipal Clerk	Prorated proportionately between jurisdictions
Polling Places	Who's Responsible	Who Pays
Establishing and changing polling places†	Governing Body of Municipality	Municipality

* Regularly scheduled elections are the February Spring Primary, April Spring Election, September Partisan Primary, and November General Election. s.5.02(5), (18), (21), (22), Wis. Stats.

† When a school board election is conducted when no other election is held at a polling place, the school board may close a polling place if it qualifies under s.120.06(9), Wis. Stats.

Special Notes:

If no other level of government is involved in a school or special district election, *at anytime*, the district shall pay for all costs of the ballots, supplies, notices and other materials. s.5.68(2), Wis. Stats.

When a county, school district, or special purpose district holds a special election *at a time other than a regularly scheduled election*, all costs of the election are the responsibility of the jurisdiction calling the special election (all costs of the ballots, supplies, notices and other materials, including the cost of the polling place and election inspectors). ss. 5.68(2), (5), 7.03(1)(bm), Wis. Stats.

Prepared by State Elections Board Staff (8/29/2000)