



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON ELECTION LAW REVIEW

FROM: Robert J. Conlin, Senior Staff Attorney and Nicholas Zavos, Staff Attorney

RE: Committee Member Suggestions for Committee Discussion

DATE: November 10, 2004

This Memo includes those issues presented in Memo No. 1, *Committee Member Suggestions for Committee Discussion*, October 6, 2004 and those presented in a letter dated October 8, 2004 from committee member Kennedy.

The issues addressed in this Memo and the page at which the discussion of each of the issues begin is identified below:

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HELP AMERICA VOTE ACT (HAVA)-RELATED ISSUES

Cost of HAVA-Mandated Voting Equipment

Committee members noted the potentially high cost that municipalities will have to bear to comply with HAVA's requirement that each polling place have at least one voting device that is accessible to individuals with disabilities. [Committee members Hesse and Bhend.]

- **Background**

Title III of HAVA, among other things, establishes various voting system standards that states must meet. Generally, the standards must be met by January 1, 2006. Under HAVA, the voting system used in an election for federal office must, among other things, be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence as for other voters. This requirement can be satisfied through the use of at least one direct record electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

HAVA provided federal funding to assist the state in meeting the federal requirements. It is estimated that the primary sources of funding for the accessible voting equipment requirement will come from HAVA SEC. 102 funds (to be used by states to replace lever and punch card voting systems), HAVA SEC. 251 funds (so-called requirement payments available to states to assist in meeting various

HAVA election administration requirements including the statewide voter registration system and voting equipment that will comply with HAVA's voting system standards), and state matching funds (the appropriation of which was required to qualify for certain federal HAVA funds).

According to the state's initial HAVA plan, Wisconsin's present voting systems fall short of the federal standards in providing access to individuals with disabilities. The state plan indicates that the state will evaluate disability access compliance for new voting systems and will develop an implementation and acquisition plan for compliant voting systems. The state plan also indicates that accessible voting equipment will be one of the priority uses of federal HAVA funds.

The staff of the Elections Board has estimated that compliance with the voting system standards requirement will cost approximately \$12 to \$18 million. (The state plan estimates approximately \$16.4 million.)

To date, the state has received approximately \$1.3 million in SEC. 102 funds and approximately \$43.1 funds in SEC. 251 funds (including the state match obligation). However, as final costs are not yet known, and because federal funds also need to be used to meet other federal mandates like statewide voter registration, it is unclear whether sufficient federal funds will be available to cover all of the costs of purchasing accessible voting equipment and ongoing programming and maintenance costs for such equipment.

- **Suggestions**

Mr. Kennedy suggested redefining polling places in order to minimize the amount of expensive equipment required to be purchased in order to comply with the HAVA requirement.

Cost to Municipalities of Statewide Voter Registration System

An issue was raised regarding implementation of the statewide voter registration system required by HAVA and the provision of state law allowing municipal clerks to enter into agreements with county clerks to enter and update registration information for the municipality into the statewide voter registration system. Primarily, the concern expressed was over the reasonableness of the fees that might be charged by counties. [Committee member Bhend.]

- **Background**

HAVA requires states to have a single, uniform, centralized, interactive computerized statewide voter registration list. Wisconsin must implement its list by January 1, 2006. 2003 Wisconsin Act 265 directed the Elections Board to develop, implement, and maintain the list. Presently, the board is in the process of selecting a vendor to design the list.

Generally, Act 265 imposed on municipal clerks the duty to update the list whenever the clerk receives information showing a change in elector data, such as a new address or a change in the eligibility status of an elector. However, Act 265 authorized municipal clerks to, by mutual consent, designate any other municipal clerk or county clerk as the clerk's agent to carry out the voter registration functions, including those relating to updating the statewide voter registration list.

- **Suggestions**

No specific suggestions were made. However, the member who raised the issue would prefer that any charges made under this provision be limited to “reasonable” charges.

VOTER REGISTRATION ISSUES

Registration Workload

It has been suggested that when voter registration materials are received by mail and the materials are improperly submitted or contain incorrect or incomplete information, the workload and costs of municipal clerks increases when they have to respond to incorrect submissions. [Committee member Hesse.] In addition, the large number of registrations during this election cycle has pointed out some of the weaknesses in the registration system. [Committee member Kennedy.]

- **Background**

State law requires that upon receipt of a registration form that has been submitted by mail, the municipal clerk receiving the form must examine the form for sufficiency. [s. 6.32 (1), Stats.] If the form is insufficient or if the clerk knows or has reliable information indicating that the elector is not qualified, state law requires the clerk to notify the proposed elector within five days, if possible, and request that the elector appear at the clerk’s office or other registration center to complete a proper registration or substantiate the information presented. [s. 6.32 (2), Stats.] If the registration form is submitted later than the close of registration (generally, the second Wednesday before the election), the clerk must make a good faith effort to notify the elector that he or she may register at the clerk’s office or at the polls on election day. [s. 6.32 (3), Stats.] If, on the other hand, the registration is sufficient, the clerk is to enter the elector’s name on the registration list and transmit a first class letter or postcard to the registrant, specifying the elector’s ward or aldermanic district and polling place. [s. 6.32 (4), Stats.]

- **Suggestions**

Kevin Kennedy suggested that the deadline for registration be moved from 13 days before the election to 15 days (3rd Monday), 18 days (3rd Friday), 20 days (3rd Wednesday), 22 days (4th Monday), 25 days (4th Friday), or 29 days (5th Monday).

Lack of Registration Personnel

It has been suggested that more people need to be able to do registration functions prior to an election. [Committee member Nickolaus.]

- **Background**

Generally, under current law, the municipal clerk or the Board of Election Commissioners of a municipality are to administer elector registration within the municipality when registration is required. [s. 6.26 (1), Stats.] [Beginning in 2006, registration will be required in all municipalities.] A qualified elector of the state may apply to any municipal clerk or board of election commissioners to be appointed as a special registration deputy for the purpose of registering electors of the municipality. Such person

may serve as a special registration deputy of more than one municipality. [s. 6.26 (2) (a), Stats.] In addition, effective for the Spring Primary of 2006, a qualified elector of the state may apply to the State Elections Board to be appointed as a special registration deputy of any municipality in the state. [s. 6.26 (2) (am), Stats., as created by 2003 Wisconsin Act 265.] An appointment may be revoked for cause at any time. [s. 6.26 (2) (b), Stats.]

The statutes require the Elections Board, by rule, to prescribe procedures for appointment of special registration deputies, for revocation of special registration deputies, and for training of special registration deputies by municipal clerks and boards of election commissioners. The procedures must be formulated to promote increased registration of electors consistent with the needs of municipal clerks and boards of election commissioners to efficiently administer the registration process. [s. 6.26 (3), Stats.]

Throughout the year, and before the close of registration, registrations may be made at the office of the municipal clerk or board of election commissioners, at the office of any register of deeds, or other locations. Registration deputies must be appointed for all locations. [s. 6.28 (1), Stats.] Registration forms may also be submitted by mail. [s. 6.30 (4), Stats.]

- **Suggestions**

- ◆ County clerks should be authorized to perform registration in their counties. In addition, county clerks should be able to deputize people for registration purposes. Also, municipal clerks should be able to refuse to deputize registration deputies based on criteria set up by the municipal clerk. Finally, all voter registration deputies must be trained. [Committee member Nickolaus.]
- ◆ Municipal clerks should be given more discretion in appointing registration deputies and more direction in regulating such deputies. [Committee member Kennedy.]
- ◆ Appointed deputies should be monitored in the statewide voter list kept by the Elections Board. [Committee member Kennedy.]
- ◆ Limit access to Social Security number, date of birth, and driver's license number. Require that people doing voter registration maintain the confidentiality of this information, and provide penalties for retaining this information. Require a signed statement and special oath for special registration deputies. [Committee member Kennedy.]
- ◆ Either voter registration deputies must be required to see appropriate identification of the person they are registering, or all voters who register through registration deputies should be required to show identification before receiving a ballot at the polls. [Committee member Kennedy.]
- ◆ Student voters with out-of-state driver's licenses should be required to disclose the driver's license number as part of the registration process so that allegations of fraud can be better investigated. [Committee member Kennedy.]

ELECTION ADMINISTRATION ISSUES

Qualifications for Circulators

It has been suggested that current law be changed so that a circulator of a petition or nomination paper need only be an adult U.S. citizen. [Committee member Kennedy.]

- **Background**

Under current statutes, each nomination paper and petition for an election must be circulated by a qualified elector of the jurisdiction or district in which the paper or petition is circulated. However, in *Frami v. Ponto*, 255 F. Supp. 962 (W.D. Wis. 2003), a federal district court ruled that this residency requirement is unconstitutional and enjoined the state from enforcing the statutory requirement.

- **Suggestions**

Mr. Kennedy suggested amending current law to provide that a circulator of nomination papers or petitions need only be adult U.S. citizens. This was the approach taken by 2003 Assembly Bill 810, which was introduced by the Assembly Committee on Campaigns and Elections. That bill failed to pass the Legislature.

Identification Requirements

It has been suggested that the statutes should harmonize the types of identification acceptable for first-time voters under HAVA mandates, with those that are acceptable for demonstrating residence for late registrations and election day registration. [Committee member Kennedy.]

- **Background**

Under current law, before being given a ballot, a first-time voter in the state who registered to vote by mail must show acceptable identification. Identification that is acceptable in this circumstance is a “current and valid piece of identification containing a photograph of the elector,” or 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. [s. 5.02 (6m), Stats.] Similarly, a person who registers after the close of registration or at the polling place on election day must provide acceptable proof of residence in order to complete his or her registration. The proof of residence must include a current and complete name and a current and complete residential address. Section 6.55 (7), Stats, provides a nonexhaustive list of acceptable proof of residence for polling place registration, as follows: a driver’s license or other official identification card or license issued by a Wisconsin governmental body or unit or by an employer in the normal course of business; a credit card or plate; a library card; a check-cashing card; a real estate tax bill or receipt; a residential lease; a university, college, or technical institute fee or identification card; an airplane pilot’s license; and a gas, electric, or telephone service statement. [s. 6.55 (7) (a) and (c), Stats.]

- **Suggestions**

Mr. Kennedy suggested that s. 6.55 (7), Stats., should be amended to include a utility bill, pay check, government check, government document, or bank statement with the voter's name and current address. In addition, the references to library card, check cashing card, and credit card should be eliminated since those normally do not list the voter's address.

Inspectors' Statements

It has been suggested that the requirement that inspectors complete their statutorily required "inspector's statements" after tallying the votes at a polling place in duplicate be repealed as only the original is necessary. [Committee member Kennedy.]

- **Background**

Currently, s. 7.51 (4), Stats., requires that, after tallying the votes at the polling place, the poll workers must complete inspectors' statements in duplicate.

- **Suggestions**

Mr. Kennedy suggested amending current law to require the preparation of only an original inspector's statement be prepared on election day. The municipal clerk could make the appropriate duplicate copies.

Absentee Ballots

It has been suggested that a number of changes be made to the absentee ballot process. [Committee member Kennedy.]

- **Background**

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.] 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:

- By mail.
- In person at the office of the municipal clerk.
- 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).
- By agent if the elector is hospitalized.

- 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 electors, 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.]

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.]

- **Suggestions**

- ◆ Absentee ballots should only be able to be sent to the voter at the voter's permanent or temporary address. [Committee member Kennedy.]
- ◆ Restrict who can provide assistance to absentee voters to keep political operatives from assisting absentee voters. [Committee member Kennedy.]
- ◆ Restrict who can pick up and deliver absentee ballots that have been voted to keep political operatives from having access to absentee ballots. [Committee member Kennedy.]
- ◆ Permit municipal clerks to accept requests for absentee ballots by e-mail or fax in order to facilitate military voters. [Committee member Kennedy.]
- ◆ Prohibit an individual with power of attorney from casting an absentee vote for an elector and from completing a voter registration application on behalf of an elector. [Committee member Kennedy.]
- ◆ Reexamine the date of the partisan primary because the time period for preparing ballots following the partisan primary is too short to ensure that absentee ballots can be delivered to military and overseas voters. [Committee member Kennedy.]

Enforcement of Election Laws

It has been suggested that additional civil forfeiture penalties for violations of the election laws be created. [Committee member Kennedy.]

- **Background**

Currently, most violations of the Elections Law carry only criminal penalties and, generally, may only be prosecuted by district attorneys. According to Mr. Kennedy, prosecutors are reluctant to bring criminal charges for many such violations. [Committee member Kennedy.]

- **Suggestions**

Mr. Kennedy suggested the creation of more civil forfeiture penalties for such violation and authorize the Elections Board to prosecute said violations.

Partisan Primaries

It has been suggested that crossover voting at partisan primaries is a significant concern. Many voters desire to vote for the candidates of their choice regardless of party rather than be constrained to vote for candidates of only one party. [Committee member Kennedy.]

- **Background**

Under current law, electors at the September partisan primary may only vote for candidates of one party. As it is a, “open primary,” voters need not declare their party affiliation to poll workers but may divide which party’s candidates he or she will support in the privacy of the voting booth. The following excerpt is from a recent publication of the Elections Board which presents a history of the “open primary” in Wisconsin and identifies some of the mechanics of how the primary works.

Wisconsin adopted the open primary law for partisan offices after a favorable referendum vote in November 1904. In 1905, the law was extended to the selection of national convention delegates. Until then, Wisconsin candidates for public office were selected at caucuses or conventions made up of delegates, eligible voters, or members of a political party. Even today in towns and villages, the nominating caucus is still an option for selecting candidates for local office.

In Wisconsin, those who aspire to political office qualify for primary ballot status by filing a declaration of candidacy and nomination papers signed by a specified number of persons eligible to vote in the constituency to show that they have at least a minimum level of support. In the primary, the candidate for an office who receives the highest number of votes in each party becomes that party’s nominee for the general election. A write-in candidate in the primary may qualify to appear on the ballot in November only if the number of votes he or she receives equals the greater of at least five percent of the party vote for governor cast in the jurisdiction or the district at the last general election or the minimum number of signatures required on nomination papers for the office. If a write-in candidate receives more votes than a candidate whose name appears on the ballot, the 5 percent requirement does not apply.

Independent candidates qualify to appear on the general election ballot simply by filing nomination papers with the appropriate number of signatures. However, independent candidates for legislative and constitutional offices appear on the primary ballot in order to qualify for public funding grants.

There are four different voting systems used in Wisconsin: paper ballot, lever machine, optical scan (marksense) and direct record. Wisconsin eliminated punch card voting immediately following the 2000 general election. Eighty-five percent (85%) of all Wisconsin voters will vote using an optical scan voting system.

Voters using an optical scan system will receive a ballot that lists all party and Independent candidates. The voter selects the primary he or she wishes to participate in by completing the arrow or filling in the oval next to the political party of choice. Once the political party choice is made, the tabulation equipment will only count votes in that party. If no party choice is made and the voter chooses candidates from more than one party, none of the votes are counted.

Voters using paper ballots will receive six different ballots. Only one is used and the voter discards the remaining five before placing the voted ballot in the ballot box. With the lever voting machine, the voter selects a party by pulling a lever on the machine that designates the party of choice, preventing voting for any of the other parties. Direct record is an electronic version of the lever machine. Once the desired party primary is chosen, the other primaries are electronically locked out.

- **Suggestions**

Mr. Kennedy suggested the following options for committee consideration:

- ◆ Provide separate ballots for each party.
- ◆ Make county courthouse offices nonpartisan.
- ◆ Raise the threshold for a political party to have a partisan primary ballot.

Poll Hours

A suggestion was made that the structure of the current polling place hours be maintained.
[Committee member Bhend.]

- **Background**

Under current law, polls in first, second, and third class cities must be open from 7:00 a.m. to 8:00 p.m. on election day. In fourth class cities, villages, and towns, the polls must be open from 9:00

a.m. until 8:00 p.m., but the governing body of the municipality may extend the hours to not earlier than 7:00 a.m. In recent legislative sessions, proposals have been introduced and debated to establish uniform polling place hours throughout the state from, generally, 7:00 a.m. to 8:00 p.m. Legislators from rural districts have often objected to such proposals, arguing that it is difficult to get poll workers to the polls that early in rural areas and that the number of voters in some rural areas does not justify extended poll hours.

- **Suggestions**

Ms. Bhend recommended maintaining current law.

Minimum Age Requirement to Witness an Absentee Ballot

A question was raised about the minimum age that a person must be in order to witness an absentee ballot. [Committee member Bhend.] A question was raised about the number of witnesses required to witness an absentee ballot. [Committee member Kennedy.]

- **Background**

Generally, current law requires that an absentee ballot be marked in the presence of one witness. The witness must sign a statement on the outside of the ballot envelope. [s. 6.87, Stats.] The statutes preclude the witness from being a candidate at the election (except for a municipal clerk). [s. 6.87 (7) and (8), Stats.] In most cases, the election laws do not explicitly provide for a minimum age for a witness. However, for both military and overseas voters voting absentee, the statutes specifically provide that the witness must be an “adult U.S. citizen.” [See ss. 6.22 (2) (b) and 6.24 (4) (d), Stats.]

- **Suggestions**

No specific suggestions were made regarding the age of the witness. However, one option would be to clarify in the statutes the age requirements for all witnesses of absentee ballots. Alternatively, current law could be maintained. Kevin Kennedy recommended that no change be made in the *number* of witnesses required.

Reporting of Write-In Votes

It was suggested that votes for write-in candidates who receive only a few votes or who do not file declarations of candidacy not be counted or be recorded simply as a “scattering.” [Committee members Nickolaus and Kennedy.]

- **Background**

Under current law, the name of each person who receives a vote in an election is recorded on the returns for that election. When a county or state canvass of an election is performed, the names of write-in candidates who receive a comparatively small number of votes may be omitted and their votes designated on the returns as “scattering votes.” [ss. 7.51 (4) (a), 7.60 (4) (c), and 7.70 (3) (f), Stats.]

- **Suggestions**

Both Ms. Nickolaus and Mr. Kennedy suggested that current law could be changed so that only votes for registered write-in candidates in partisan elections are counted, unless no person is on the ballot or if a candidate whose name appears on the ballot is deceased. In addition, municipalities could be authorized to report votes for write-ins as “scatterings” unless they receive a substantial number of votes or no candidates appear on the ballot. Finally, write-in candidates could be required to file a declaration of candidacy with the appropriate filing officer or agency no later than 5:00 p.m. on the Thursday before the election in which the candidate seeks office in order to have write-in votes recorded, unless there are no other candidates on the ballot or if a candidate on the ballot is deceased.

The above approach is similar to the one taken by 2003 Assembly Bill 115 which was introduced by Representative Freese and others and cosponsored by Senator Fitzgerald and others. Assembly Bill 115 would have allowed any write-in candidate to file a declaration of candidacy with the appropriate filing officer or agency no later than 5:00 p.m. on the day before the primary or other election in which the candidate seeks office. The bill would have provided that the name of any write-in candidate need not be recorded on the returns for an election unless the candidate has filed a timely declaration of candidacy for the office for which he or she receives such votes. The provisions of the bill would not have applied if a write-in candidate had sought an office for which there were no candidates whose name appears on the ballot or if there appears on the ballot the name of a deceased candidate for the office that the write-in candidate seeks. The Assembly passed Assembly Bill 115, with an amendment, on March 18, 2003, but the Senate failed to take the bill up.

County Clerk Participation in Board of Canvassers in Recount Process

The suggestion was made that county clerks be allowed to serve on the Board of Canvassers even if they are on the ballot, so long as they are unopposed. [Committee member Nickolaus.]

- **Background**

Under current law, the county clerk and two qualified electors of the county appointed by the clerk constitute the County Board of Canvassers. The clerk must designate a deputy clerk who must perform the clerk’s duties on the Board of Canvassers in the event that the county clerk’s office is vacant, the clerk cannot perform his or her duties, or the clerk is a candidate at an election being canvassed. [s. 7.60 (2), Stats.] Generally, the Board of Canvassers is in charge of the recount process in the county.

- **Suggestions**

Ms. Nickolaus suggested that a county clerk who appears on the ballot of an election at an election ought to be able to serve on the Board of Canvassers if the clerk is unopposed on the ballot. This will avoid deputy clerks having to run the Board of Canvassers during high profile elections. In addition, an uncontested county clerk ought to be able to run a recount as long as the recount is not for the county clerk’s office.

Timing of Certification and Ballot Delivery

A suggestion was made regarding the timing of certification and delivery of ballots to better coordinate the timing thereof. [Committee member Nickolaus.]

- **Background**

Generally, under current law, the State Elections Board must transmit to each county clerk a certified list of all candidates on file in its office for which electors in that county may vote. The certification must be sent as soon as possible after the closing date for filing nomination papers or after the canvass of the primary vote but not later than certain statutory deadlines. [s. 7.08 (2) (a), Stats.] For the spring primary, the latest date for sending notice of certification is the second Tuesday in January. For the spring election, the latest date is the first Tuesday in March (or the second Tuesday in January if no primary is required). For the September primary, the latest date is the third Tuesday in July. Finally, for the general election, the latest date is the fourth Tuesday in September. [s. 10.06 (1), Stats.] The certification must be sent by Type B notice, which also contains a facsimile ballot.

In addition, the county clerk is required to prepare a copy for the official ballots immediately upon receipt of the certified list from the Elections Board. [s. 7.10 (2), Stats.] The county clerk must distribute the ballots to 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), Stats.]

- **Suggestions**

Ms. Nickolaus suggested that all certifications for an election should be due on the same date. Ballots should be delivered 25 days before the election. Ballot delivery should be a specific number of days after certification from the Elections Board. Finally, the Elections Board should send a draft of the ballot to county clerks along with a Type A (notice of election) notice to allow clerks to start their ballot setup.

Publication of Election Notices

It was suggested that clerks be given more flexibility in their choice of the manner of publishing election notices. [Committee member Nickolaus.]

- **Background**

Generally, under current law, election notices that are required to be published may be published only in newspapers qualified under ch. 985, Stats. [s. 10.04 (1), Stats.] Such qualifications involve, among other things, the level of the newspaper's circulation. [See, generally, s. 985.03 (1) (a), Stats.] County clerks must publish election notices in all such newspapers published within the county, unless the county board provides otherwise by resolution. The Board of Election Commissioners or governing body of a municipality (city, town, or village) may authorize, by resolution, the publication of election notices in more than one newspaper. [s. 10.04 (2), Stats.]

- **Suggestions**

Ms. Nickolaus suggested that municipal and county clerks should be allowed to include election notices in municipal or county newsletters that are sent to all residents instead of publishing notices in newspapers.

Notices of School District Referendum

It was pointed out that there is no requirement for school districts to notify the county clerk of any referendum if the county clerk is not responsible for preparing the ballots for the election. [Committee member Nickolaus.]

- **Background**

Current law generally requires all proposed constitutional amendments and any other measure or question that is to be submitted to a vote of the people to be filed with the official or agency responsible for preparing the ballots for the election 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.]

- **Suggestions**

Ms. Nickolaus suggested that all county clerks of counties with territory affected by a school district referendum should be provided notice under s. 8.37 of the school district referendum.

Recall Petitions

It was suggested that the criteria for recall petitions should be changed. [Committee member Nickolaus.]

- **Background**

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 that 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 only be shown on the ballot for the recall election. [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.]

- **Suggestions**

Ms. Nickolaus suggested that recall petitions should state the grounds that constitute cause for a recall of officials, e.g., neglect of duty or official misconduct. Also, the number of signatures required on recall petitions should be increased.

PREFERENTIAL VOTING FOR NONPARTISAN OFFICES

It was suggested that utilizing preferential voting eliminates the need for primaries and may be an efficient way of filling nonpartisan offices with a candidate who has broad-based support. [Committee member Kennedy.]

- **Background**

Generally, a primary is required when there are more than two candidates who qualify to have their names on the ballot. If a primary is held, each voter selects a candidate for each office, and the two candidates who receive the most votes appear on the ballot at the ensuing general election. Preferential voting would eliminate the need for this primary. Instead, whenever there are three or more candidates for an office, the voter can rank the candidates in order of preference. If a candidate receives a majority of first-choice votes, that candidate is elected. If no candidate receives a majority of first-choice votes, the candidate with the fewest first-choice votes is dropped and the votes are reallocated. The second-choice votes for the dropped candidate are added to the first-choice votes of the remaining candidates, and the third-choice votes are added to the second-choice votes for the other candidates. This process is repeated until one candidate receives a majority.

- **Suggestions**

Mr. Kennedy suggested that the committee examine the efficacy of preferential voting. He noted that 2003 Assembly Bill 911 proposed allowing the governing body of each municipality, except a town or village where a caucus is used, to adopt this method for nonpartisan offices.

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