

- 1 **AN ACT** *to amend* 7.41 and 12.03 (1), (2) and (4) of the statutes; **relating to:**
2 observation and electioneering activities in the office of the municipal clerk.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the joint legislative council's special committee on election law review.

Observers

Under current law, any member of the public may be present at any polling place for the purpose of observing an election, except a candidate at that election. The chief inspector at the polling place is authorized to "reasonably limit" the number of persons representing the same organization who are permitted to observe an election at the same time. In addition, the chief inspector is authorized to restrict the location of observers to certain areas at a polling place. Such an area is to be clearly designated as an observation area. Observation areas must be positioned to allow observers to readily observe all public aspects of the voting process.

The statutes authorize a chief inspector to order the removal from a polling place of any observer who commits an overt act which either disrupts the operation of the polling place or who engages in electioneering in violation of s. 12.03 (2), stats.

Under the statutes, an observer may not view the confidential portion of a registration list relating to an individual who has obtained a confidential listing based on domestic abuse. However, the poll workers must disclose to an observer, upon request, the existence of such a list, the number of electors whose names appear on the list, and the number of those electors who have voted at any point during the election. In addition, an observer may not view the certificate of an absent elector who has obtained such a confidential listing.

Current law prohibits any person from refusing to obey a lawful order of a poll worker made for the purpose of enforcing the election laws; engaging in disorderly behavior at or near a polling place; or interrupting or disturbing the voting or canvassing proceedings. A person violating

this prohibition may be fined not more than \$1,000, or imprisoned for not more than 6 months, or both.

This draft applies the above observation provisions to the municipal clerk's office on any day that absentee ballots may be cast in that office. However, the observation provisions created by the draft would only apply to offices of municipal clerks that are located in public buildings. Accordingly, these provisions would not apply to clerks whose offices are located in their primary residences. In addition, the prohibition on a "candidate at that election" being an observer is clarified to apply to a candidate whose name appears on the ballot at the polling place or on an absentee ballot to be cast at the clerk's office.

Electioneering

Current law prohibits an election official from engaging in "electioneering" on election day. In addition, the law prohibits any person from engaging in "electioneering" during polling hours on any public property on election day within 100 feet of an entrance to a building containing a polling place. This restriction, though, does not apply to the placement of any material on the bumper of a motor vehicle that is located on such property on election day. A municipal clerk, poll worker, or law enforcement officer is authorized to remove posters or other advertising that violates the prohibitions on "electioneering".

The law defines "electioneering" as any activity that is intended to influence voting at an election. Persons who violate the above prohibitions on electioneering may be fined not more than \$1,000, or imprisoned for not more than 6 months, or both. In addition, any election official who is convicted of violating the electioneering prohibitions is disqualified from acting as an election official for a term of 5 years from the time of the conviction.

The draft extends the prohibitions on electioneering to the municipal clerk's office during times when absentee voting may be conducted in the office. Specifically, the draft prohibits the clerk, an employee of the clerk, or any other person who assists electors cast absentee ballots in the clerk's office from engaging in electioneering activities during the hours that absentee ballots may be cast in that office. In addition, the draft prohibits any person from engaging in electioneering activities during the hours that absentee ballots may be cast in the municipal clerk's office on any public property within 100 feet of an entrance to a building that contains the clerk's office. Violations of these provisions are subject to the same penalties as provided under current law for electioneering at a polling place.

This draft contains an effective date of January 1, 2006.

1 **SECTION 1.** 7.41 of the statutes is amended to read:

2 **7.41 Public's right to access. (1)** Any member of the public may be present at any
3 polling place or in the office of any municipal clerk whose office is located in a public building
4 on any day that absentee ballots may be cast in that office for the purpose of observation of
5 an election and the absentee ballot process in the clerk's office, except a candidate whose name
6 appears on the ballot at the polling place or on an absentee ballot to be cast at the clerk's office
7 at that election. The chief inspector or municipal clerk may reasonably limit the number of
8 persons representing the same organization who are permitted to observe ~~an election~~ under
9 this subsection at the same time.

10 **(2)** The chief inspector or municipal clerk may restrict the location of any individual
11 exercising the right under sub. (1) to certain areas within a polling place or within the clerk's
12 office. The chief inspector or municipal clerk shall clearly designate such an area as an
13 observation area. Designated observation areas shall be so positioned to permit any
14 authorized individual to readily observe all public aspects of the voting process.

15 **(3)** The chief inspector or municipal clerk may order the removal of any individual
16 exercising the right under sub. (1) if that individual commits an overt act which:

17 (a) Disrupts the operation of the polling place or the operation of the clerk's office; or

18 (b) Violates s. 12.03 (2).

19 **(4)** No individual exercising the right under sub. (1) may view the confidential portion
20 of a registration list maintained under s. 6.36 (4) or a poll list maintained under s. 6.79 (6).
21 However, the inspectors or municipal clerk shall disclose to such an individual, upon request,
22 the existence of such a list, the number of electors whose names appear on the list, and the
23 number of those electors who have voted at any point in the proceedings. No such individual

1 may view the certificate of an absent elector who obtains a confidential listing under s. 6.47
2 (2).

NOTE: SECTION 1 extends the provisions of current law relating to the observation of elections to the municipal clerk's office on any day that absentee ballots may be cast in that office. The provisions would apply to such offices located in a public building.

In addition, the SECTION clarifies that the prohibition in observation by a "candidate at that election" applies to a candidate whose name is in the ballot at the polling place or on an absentee ballot to be cast at the clerk's office. Thus, a candidate may not "observe" his or her own election, but may observe at polling places or clerk's offices outside of the election district in which he or she seeks office.

3 **SECTION 2.** 12.03 (1), (2) and (4) of the statutes are amended to read:

4 12.03 ~~Election day campaigning~~ **Campaigning restricted where votes cast.** (1) No
5 election official may engage in electioneering on election day. No municipal clerk, employee
6 of the clerk, or other person who assists electors cast absentee ballots in the clerk's office may
7 engage in electioneering during the hours that ballots may be cast in that office.

8 (2) No person may engage in electioneering during polling hours on any public property
9 on election day within 100 feet of an entrance to a building containing a polling place. No
10 person may engage in electioneering during the hours that absentee ballots may be cast in the
11 municipal clerk's office on any public property within 100 feet of an entrance to a building
12 containing the clerk's office. This subsection does not apply to the placement of any material
13 on the bumper of a motor vehicle that is located on such property on election day or during
14 the hours that absentee ballots may be cast in the clerk's office.

15 (4) In this section, "electioneering" means any activity which is intended to influence
16 voting ~~at an election.~~

NOTE: This SECTION extends the prohibitions on electioneering applicable to polling places to cover municipal clerk's offices during the hours that absentee ballots may be cast in those offices. In doing so, the

definition of “electioneering” was altered by deleting the reference to “an election”, so that it would apply to voting by absentee ballot in a clerk’s office prior to election day.

1 **SECTION 3. Effective date.** This act takes effect on January 1, 2006.

2 (END)