CHAPTER 5
ELECTIONS — GENERAL PROVISIONS; BALLOTS AND VOTING SYSTEMS

SUBCHAPTER I
GENERAL PROVISIONS

5.01 Scope. (1) CONSTRUCTION OF CHS. 5 TO 12. Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.

(2) GENERAL PROVISIONS OF ELECTION LAWS APPLY. The general provisions of chs. 5 to 12 apply to all elections.

(3) PLURALITY SHALL ELECT. (a) Except as provided in par. (b), in every election to choose any officer, each elector has one vote.

(b) In an election to fill a nonpartisan state office, if no names are certified to appear on the ballot, no person may be declared elected.

(4) THE VOTE. (a) If 2 or more candidates for the same office receive the greatest, but an equal number of votes, the winner shall be chosen by lot in the presence of the board of canvassers charged with the responsibility to determine the election, or in the case of an election for state or national office or metropolitan sewerage district with the responsibility to determine the election, or in the case of an election for a nonpartisan state office, if all those tied for the same office are identical, the candidates may, if all those tied for the same office are identical, the candidates may, if one candidate is declared elected, and the canvassers shall so determine and certify the winner.

(b) In a primary, 2 or more candidates receive an equal but not the greatest number of votes so that only one of those candidates with equal votes may advance to the final election, the choice shall similarly be made by drawing lots.

(c) The candidates may, if all those tied for the same office are present, draw for themselves. Upon refusal or absence of any of the candidates, the board of canvassers shall appoint a competent person to draw, and upon the results declare and certify the winner.

(d) If a question is submitted to the electors and an equal number of votes are cast for and against adoption, the question fails adoption.

(5) ELECTION OF GOVERNOR AND LIEUTENANT GOVERNOR. (a) In every general election to choose the governor and the lieutenant governor, each elector shall have a single vote applicable to both offices. The persons receiving the greatest number of legal votes cast jointly for them for governor and lieutenant governor shall be declared elected, and the canvassers shall so determine and certify.

(b) In case 2 or more slates have an equal and the highest number of votes for governor and lieutenant governor, the 2 houses of the legislature shall at the next annual session choose by joint ballot one of the slates so having an equal and the highest number of votes for governor and lieutenant governor.

History: 1979 c. 89; 1983 a. 484; 1985 a. 304; 1997 a. 27; 1999 a. 150 s. 672; 1999 a. 182.

The supreme court has consistently construed election statutes as being directory, in keeping with sub. (1) directive that election laws shall be construed to give effect to the will of the electors. Lasser v. Kocoris, 62 Wis. 2d 86, 214 N.W.2d 425 (1974).

When 40% of registered voters were denied ballots in an election to remove a county seat, the election was set aside even though the outcome probably was not affected. McNally v. Tolland, 100 Wis. 2d 490, 302 N.W.2d 440 (1981).

Sub. (1) applies only after an election has been held and the will of the people manifested. City of Chippewa Falls v. Town of Hallie, 231 Wis. 2d 85, 604 N.W.2d 300 (Ct. App. 1999), 99−0832.

Only substantial violations of the election law should operate to vacate an election. Carlson v. Outon County Board of Canvassers, 2001 WI App 20, 240 Wis. 2d 438, 623 N.W.2d 195, 00−1288.

NOTE: 2005 Wis. Act 451, which made major revisions to the election laws, including to Chapter 5, contains an extensive prefatory note explaining the changes.
5.02 Definitions. In chs. 5 to 12, unless the context requires otherwise:

(1c) “Automatic tabulating equipment” means apparatus which automatically examines and counts votes recorded on ballots or voting machines and tabulates the results.

(1e) “Ballot” means a ballot label, sheet of paper or envelope on which votes are recorded. The term also includes a sheet or card, filmstrip or other device listing or containing information relative to offices, candidates and referenda which is placed, projected or composed on the board or screen inside a voting machine.

(1s) “Board” means the government accountability board.

(2) “County clerk” includes the executive director of the county board of election commissioners and their authorized representatives.

(3) “Educational officer” means the state superintendent and school board members.

(3m) “Elected official” means an individual who is elected to a national, state or local office.

(4) “Election” means every public primary and election.

(4c) “Election district” means a municipality that is not divided into wards, except as otherwise provided in s. 8.17 (1) (b).

(4e) “Election official” means an individual who is charged with any duties relating to the conduct of an election.

(4m) “Electronic voting system” means a system in which votes are recorded on ballots, and the votes are subsequently counted and tabulated by automatic tabulating equipment. The term also includes a voting machine on which votes are recorded and tabulated by electronic means.

(5) “General election” means the election held in even-numbered years on the Tuesday next following the November after the federal election.

(6) “Governing body” means the common council of a city, board of supervisors of a town or board of trustees of a village.

(7) “Judge” means a court of appeals judge or a judge of a circuit court.

(8) “Justice” means a justice of the supreme court.

(8m) “Labor organization” means any employee organization in which employees participate and which exists primarily for the purpose of engaging in collective bargaining with any employer concerning grievances, labor disputes, wages, hours or conditions of employment, or the promotion and advancement of the professional or occupational standards and the welfare of its members and families and any organization established for the same purposes composed of individuals or affiliates of any such employee organization.

(9) “Local office” means any elective office other than a state or national office.

(10) “Municipal clerk” means the city clerk, town clerk, village clerk and the executive director of the city election commission and their authorized representatives. Where applicable, “municipal clerk” also includes the clerk of a school district.

(11) “Municipality” means city, town or village.

(12) “National office” means the offices of president and vice president of the United States, U.S. senator and representative in congress.

(12m) “Nickname” means a familiar or shortened form of a proper name by which an individual is commonly known.

(13) “Political party” or “party” means a state committee registered under s. 11.05 organized exclusively for political purposes under whose name candidates appear on a ballot at any election, and all county, congressional, legislative, local and other affiliated committees authorized to operate under the same name. For purposes of ch. 11, the term does not include a legislative campaign committee or a committee filing an oath under s. 11.06 (7).

(14) “Poll list” means the list which is compiled by election officials on election day showing the names and addresses of electors who actually cast votes in an election.

(15) “Polling place” means the actual location wherein the elector’s vote is cast.

(16) “Primary” means a primary election.

(16g) “Qualified circulator” means a qualified elector of this state or any U.S. citizen age 18 or older who, if he or she were a resident of this state, would not be disqualified from voting under s. 6.03.

(16m) “Recognized political party” means a political party which qualifies for a separate ballot or column under s. 5.62 (1) (b) or (2).

(16s) “Referendum” means an election at which an advisory, validating or ratifying question is submitted to the electorate.

(17) “Registration list” means the list of electors who are properly registered to vote.

(18) “September primary” means the primary held on the Tuesday in September in any year in which candidates are to be elected for the general election and in which candidates for state offices other than district attorney may participate in the Wisconsin election campaign fund.

(19) “Special election” means any election, other than those described in subs. (5), (18), (21) and (22), to fill vacancies or to conduct a referendum.

(20) “Special primary” means the primary held 4 weeks before the special election except when the special election is held on the same day as the general election the special primary shall be held on the same day as the general primary or if the special election is held concurrently with the spring election, the primary shall be held concurrently with the spring primary.

(20g) “Special purpose district” means any local governmental unit other than a county or municipality.

(20r) “Special referendum” means any referendum held at a special election which is not held concurrently with the elections described in sub. (5), (18), (21) or (22).

(21) “Spring election” means the election held on the Tuesday in April to elect judicial, educational and municipal officers, nonpartisan county officers and sewerage commissioners.

(22) “Spring primary” means the primary held on the Tuesday in February to nominate nonpartisan candidates to be elected at the spring election and to express preferences for the person to be the presidential candidate for each party in a year in which elections for president and vice president are to be held.

(23) “State office” means the offices of governor, lieutenant governor, secretary of state, state treasurer, attorney general, state superintendent, justice of the supreme court, court of appeals judge, circuit court judge, state senator, state representative to the assembly and district attorney.

(24) “State superintendent” means the state superintendent of public instruction.

(24g) “Voting device” means an apparatus other than a voting machine which the elector uses to record his or her votes on a ballot.

(24r) “Voting machine” means a machine which serves in lieu of a voting booth and which mechanically or electronically records the votes cast by electors, who depress levers or buttons located next to the choices listed on a ballot to cast their votes.

(24w) “Voting system” means:

(a) The total combination of mechanical, electromechanical, or electronic equipment, including the software, hardware, and documentation required to program, control, and support the equipment, that is used to define ballots, to cast and count votes.
5.05 Government accountability board; powers and duties.

(1) GENERAL AUTHORITY. The government accountability board shall have the responsibility for the administration of chs. 5 to 12, other laws relating to elections and election campaigns, subch. III of ch. 13, and subch. III of ch. 19. Pursuant to such responsibility, the board may:

(b) In the discharge of its duties and after providing notice to any party who is the subject of an investigation, subpoena and bring before it any person and require the production of any papers, books, or other records relevant to an investigation. Notwithstanding s. 885.01 (4), the issuance of a subpoena requires action by the board at a meeting of the board. A circuit court may by order permit the inspection and copying of the accounts and the depositor’s and loan records at any financial institution, as defined in s. 705.01 (3), doing business in the state to obtain evidence of any violation of ch. 11 upon showing by the board of probable cause to believe there is a violation and that such accounts and records may have a substantial relation to the violation. In the discharge of its duties, the board may cause the deposition of witnesses to be taken in the manner prescribed for taking depositions in civil actions in circuit court.

(c) Bring civil actions to require a forfeiture for any violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or a license revocation for any violation of subch. III of ch. 13 for which the offender is subject to a revocation. The board may compromise and settle any civil action or potential action brought or authorized to be brought by it if, in the opinion of the board, constitutes a minor violation, a violation caused by excusable neglect, or which for other good cause shown, should not in the public interest be prosecuted under such chapter. Notwithstanding s. 778.06, a civil action or proposed civil action authorized under this paragraph may be settled for such sum as may be agreed between the parties. Any settlement made by the board shall be in such amount as to deprive the alleged violator of any benefit of his or her wrongdoing and may contain a penal component to serve as a deterrent to future violations. In settling civil actions or proposed civil actions, the board shall treat comparable situations in a comparable manner and shall assure that any settlement bears a reasonable relationship to the severity of the offense or alleged offense. Except as otherwise provided in sub. (2m) (c) 15. and 16. and ss. 5.08, 5.081, [19.535], and 19.59 (8), forfeiture and license revocation actions brought by the board shall be brought in the circuit court for the county where the defendant resides, or if the defendant is a nonresident of this state, in circuit court for the county wherein the violation is alleged to occur. For purposes of this paragraph, a person other than a natural person resides within a county if the person’s principal place of operation is located within that county. Whenever the board enters into a settlement agreement with an individual who is accused of a civil violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or who is investigated by the board for a possible civil violation of one of those provisions, the board shall reduce the agreement to writing, together with a statement of the board’s findings and reasons for entering into the agreement and shall retain the agreement and statement in its office for inspection.

NOTE: Section 19.535 was repealed by 2007 Wis. Act 1. Corrective legislation is pending.

(d) 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. No bond is required in such actions. Actions shall be brought in circuit court for the county where a violation occurs or may occur.

(e) Delegate to its legal counsel the authority to intervene in a civil action or proceeding under sub. (9), issue an order under s. 5.06, exempt a polling place from accessibility requirements under s. 5.25 (4) (a), exempt a municipality from the requirement to use voting machines or an electronic voting system under s. 5.50 (5m), approve an electronic data recording system, approve the procedures for obtaining poll lists under s. 6.79, or authorize nonappointment of an individual who is nominated to serve as an election official under s. 7.30 (4) (e), subject to such limitations as the board deems appropriate.

(f) Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns or ensuring their proper administration.

(1e) ACTIONS BY THE BOARD. Any action by the board requires the affirmative vote of at least 4 members.

(1m) LEGAL COUNSEL. The board shall employ outside the classified service an individual to serve as legal counsel who shall perform legal and administrative functions for the board.

(2) AUDITING. In addition to the facial examination of reports and statements required under s. 11.21 (13), the board shall conduct an audit of reports and statements which are required to be filed with it to determine whether violations of ch. 11 have occurred. The board may examine records relating to matters required to be treated in such reports and statements. The board shall make official note in the file of a candidate, committee, group or individual under ch. 11 of any error or other discrepancy which the board discovers and shall inform the person submitting the report or statement.

(2m) ENFORCEMENT. (a) The board shall investigate violations of laws administered by the board and may prosecute alleged civil violations of those laws, directly or through its agents under this subsection, pursuant to all statutes granting or assigning that authority or responsibility to the board. Prosecution of alleged criminal violations investigated by the board may be brought only as provided in par. (c) 11., 14., 15., and 16. and s. 978.05 (1). (c) 2. a. Any person may file a complaint with the board alleging a violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19. If the board finds, by a preponderance of the evidence, that a complaint is frivolous, the board may order the complainant to forfeit not more than the greater of $500 or the expenses incurred by the division in investigating the complaint.

b. No complaint alleging a violation of s. 19.45 (13) may be filed during the period beginning 120 days before a general or spring election, or during the period commencing on the date of the order of a special election under s. 8.50, and ending on the date of that election, against a candidate who files a declaration of candidacy to have his or her name appear on the ballot at that election.

c. Any person to whom subch. III of ch. 13 or subch. III of ch. 19 may have application request the board to make an inves-
4. If the board reviews a complaint and finds that there is a reasonable suspicion that a violation under subd. 2. has occurred or is occurring, the board shall dismiss the complaint. If the board believes that there is reasonable suspicion that a violation under subd. 2. has occurred or is occurring, the board may by resolution authorize the commencement of an investigation. The resolution shall specifically set forth any matter that is authorized to be investigated. To assist in the investigation, the board may elect to retain a special investigator. If the board elects to retain a special investigator, the administrator of the ethics and accountability division shall submit to the board the names of 3 qualified individuals to serve as a special investigator. The board may retain one or more of the individuals. If the board retains a special investigator to investigate a complaint against a person who is a resident of this state, the board shall provide to the district attorney for the county in which the person resides a copy of the complaint and shall notify the district attorney that it has retained a special investigator to investigate the complaint. For purposes of this subdivision, a person other than a natural person resides within a county if the person's principal place of operation is located within that county. The board shall enter into a written contract with any individual who is retained as a special investigator setting forth the terms of the engagement. A special investigator who is retained by the board may request the board to issue a subpoena to a specific person or to authorize the special investigator to request a circuit court to issue a search warrant. The board may grant the request by approving a motion to that effect at a meeting of the board if the board finds that such action is legally appropriate.

5. Each special investigator who is retained by the board shall make periodic reports to the board, as directed by the board, but in no case may the interval for reporting exceed 30 days. If the board authorizes the administrator of the ethics and accountability division to investigate any matter without retaining a special investigator, the administrator shall make periodic reports to the board, as directed by the board, but in no case may the reporting interval exceed 30 days. During the pendency of any investigation, the board shall meet for the purpose of reviewing the progress of the investigation at least once every 90 days. The special investigator or the administrator shall report in person to the board at that meeting concerning the progress of the investigation. If, upon receiving a report, the board does not vote to continue an investigation for an additional period not exceeding 90 days, the investigation is terminated at the end of the reporting interval. The board shall not expend more than $10,000 to finance the cost of an investigation before receiving a report on the progress of the investigation and a recommendation to commit additional resources. The board may vote to terminate an investigation at any time. If an investigation is terminated, any complaint from which the investigation arose is deemed to be dismissed by the board. Unless an investigation is terminated by the board, at the conclusion of each investigation, the administrator shall present to the board one of the following:

a. A recommendation to make a finding that probable cause exists to believe that one or more violations under subd. 2. have occurred or are occurring, together with a recommended course of action.

b. A recommendation for further investigation of the matter together with facts supporting that course of action.

c. A recommendation to terminate the investigation due to lack of sufficient evidence to indicate that a violation under subd. 2 has occurred or is occurring.

6. a. If the board finds that there is probable cause to believe that a violation under subd. 2. has occurred or is occurring, the board may authorize the administrator of the ethics and accountability division to file a civil complaint against the alleged violator. In such case, the administrator may request the assistance of special counsel to prosecute any action brought by the board. If the administrator requests the assistance of special counsel with respect to any matter, the administrator shall submit to the board the names of 3 qualified individuals to serve as special counsel. The board may retain one of the individuals to act as special counsel. The staff of the board shall provide assistance to the special counsel as may be required by the counsel to carry out his or her responsibilities.

b. The board shall enter into a written contract with any individual who is retained as special counsel setting forth the terms of the engagement. The contract shall set forth the compensation to be paid such counsel by the state. The contract shall be executed on behalf of the state by the board's legal counsel, who shall file the contract in the office of the secretary of state. The compensation shall be charged to the appropriation under s. 20.455 (1) (b).

7. No individual who is appointed or retained by the board to serve as special counsel or as a special investigator is subject to approval under s. 20.930.

Upon employment of any individual to serve as special counsel or as a special investigator for the board, the administrator of the ethics and accountability division shall certify the maximum amount provided in the employment contract to the secretary of administration, and direct the department of administration to pay bills of the special counsel or special investigator related to that case within the certified amount.

8. At the conclusion of its investigation, the board shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation under subd. 2. has occurred or is occurring. If the board determines that no probable cause exists, it shall dismiss the complaint. Whenever the board dismisses a complaint or a complaint is deemed to be dismissed under subd. 5., the board shall immediately send written notice of the dismissal to the accused and to the party who made the complaint.

9. If the board finds that there is probable cause to believe that a violation under subd. 2. has occurred or is occurring, the board may, in lieu of civil prosecution of any matter by the board, refer the matter to the district attorney for the county in which the alleged violator resides, or if the alleged violator is a nonresident, to the district attorney for the county where the matter arises, or if par. (i) applies, to the attorney general or a special prosecutor. For purposes of this subdivision, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

10. The board shall inform the accused or his or her counsel of exculpatory evidence in its possession.

11. If the board finds that there is probable cause to believe that a violation under subd. 2. has occurred or is occurring, the board may, in lieu of civil prosecution of any matter by the board, refer the matter to the district attorney for the county in which the alleged violator resides, or if the alleged violator is a nonresident, to the district attorney for the county where the matter arises, or if par. (i) applies, to the attorney general or a special prosecutor. For purposes of this subdivision, a person other than a natural person resides within a county if the person's principal place of operation is located within that county.

12. The board may, by rule, prescribe categories of civil offenses which the board will agree to compromise and settle without a formal investigation upon payment of specified amounts by the alleged offender. The board may authorize the administrator of the ethics and accountability division to compromise and settle such alleged offenses in the name of the board if the alleged offenses by an offender, in the aggregate, do not involve payment of more than $1,000.

13. If a special investigator or the administrator of the ethics and accountability division, in the course of an investigation authorized by the board, discovers evidence that a violation under subd. 2. that was not within the scope of the authorized investigation has occurred or is occurring, the special investigator or the administrator may present that evidence to the board. If the board finds that there is a reasonable suspicion that a violation under subd. 2. that is not within the scope of the authorized investigation has occurred or is occurring, the board may authorize the special investigator or the administrator to investigate the alleged violation or may elect to authorize a separate investigation of the alleged violation as provided in subd. 4.
14. If a special investigator or the administrator of the ethics and accountability division of the board, in the course of an investigation authorized by the board, makes evidence of a potential violation of a law that is not administered by the board arising from or in relation to the official functions of the subject of the investigation or any matter that involves elections, ethics, or lobbying regulation, the special investigator or the administrator may present that evidence to the board. The board may thereupon refer the matter to the appropriate district attorney specified in subd. 11.

15. Except as provided in subd. 17, if the board refers a matter to the district attorney specified in subd. 11. for prosecution of a potential violation under subd. 2. or 14. and the district attorney informs the board that he or she declines to prosecute any alleged civil or criminal violation related to any matter referred to the district attorney by the board, or the district attorney fails to commence a prosecution of any civil or criminal violation related to any matter referred to the district attorney by the board within 60 days of the date of the board’s referral, the board may refer the matter to the district attorney for another prosecutorial unit that is contiguous to the prosecutorial unit of the district attorney to whom the matter was originally referred. If there is more than one such prosecutorial unit, the chairperson of the board shall determine which district attorney to whom the matter shall be referred by publicly drawing lots at a meeting of the board. The district attorney may then commence a civil or criminal prosecution relating to the matter.

16. Except as provided in subd. 17, if the board refers a matter to a district attorney under subd. 15. for prosecution of a potential violation under subd. 2. or 14. and the district attorney informs the board that he or she declines to prosecute any alleged civil or criminal violation related to any matter referred to the district attorney by the board, the district attorney fails to commence a prosecution of any civil or criminal violation related to any matter referred to the district attorney by the board within 60 days of the date of the board’s referral, the board may refer the matter to the attorney general. The attorney general may then commence a civil or criminal prosecution relating to the matter.

17. The board is not authorized to act under subd. 15. or 16. if a special prosecutor is appointed under s. 978.045 in lieu of the district attorney specified in subd. 11.

18. Whenever the board refers a matter to special counsel or to a district attorney or to the attorney general under this subsection, the special counsel, district attorney, or attorney general shall report to the board concerning any action taken regarding the matter. The report shall be transmitted no later than 40 days after the date of the referral. If the matter is not disposed of during that period, the special counsel, district attorney, or attorney general shall file a subsequent report at the end of each 30-day period following the filing of the initial report until final disposition of the matter.

(d) 1. No individual who serves as the legal counsel to the board or as a division administrator for the board may have been a lobbyist, as defined in s. 13.62 (11). No such individual may have served in, or have been a candidate, as defined in s. 11.01 (1), for a partisan state or local office.

2. No employee of the board, while so employed, may become a candidate, as defined in s. 11.01 (1), for a state or partisan office. No individual who is retained by the board to serve as a special investigator or as special counsel may, while so retained become a candidate, as defined in s. 11.01 (1), for any state or local office. A filing officer shall decline to accept nomination papers or a declaration of candidacy from any individual who does not qualify to become a candidate under this paragraph.

(e) No individual who serves as an employee of the board and no individual who is retained by the board to serve as a special investigator or a special counsel may, while so employed or retained, make a contribution, as defined in s. 11.01 (6), to a candidate for state or local office. No individual who serves as an employee of the board and no individual who is retained by the board to serve as a special investigator or as special counsel, for 12 months prior to becoming so employed or retained, may have made or attempted to make a contribution, as defined in s. 11.01 (6), to a candidate for a partisan state or local office.

(f) Pursuant to any investigation authorized under par. (c), the board has the power:
1. To require any person to submit in writing such reports and answers to questions relevant to the proceedings as the board may prescribe, such submission to be made within such period and under oath or otherwise as the board may determine.
2. To order testimony to be taken by deposition before any individual who is designated by the board and has the power to administer oaths, and, in such instances, to compel testimony and the production of evidence in the same manner as authorized by sub. (1) (b).
3. To pay witnesses the same fees and mileage as are paid in like circumstances by the courts of this state.
4. To request and obtain from the department of revenue copies of state income or franchise tax returns and access to other appropriate information under s. 71.78 (4) regarding all persons who are the subject of such investigation.
5. Except as provided in subd. 2., no action may be taken on any complaint that is filed later than 3 years after a violation of subch. III of ch. 13 or subch. III of ch. 19 is alleged to have occurred.

2. The period of limitation under subd. 1. is tolled for a complaint alleging a violation of s. 19.45 (13) or 19.59 (1) (br) for the period during which such a complaint may not be filed under par. (c) 2. b. or s. 19.59 (8) (cm).

(h) If the defendant in an action for a civil violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 is a district attorney or a circuit judge or a candidate for either such office, the action shall be brought by the board. If the defendant in an action for a civil violation of chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 is the attorney general or a candidate for that office, the board may appoint a special prosecutor to conduct the prosecution on behalf of the state.

(i) Any special counsel or prosecutor who is appointed under par. (h) or (i) shall be independent of the attorney general and need not be a state employee at the time of his or her appointment.

(2s) ETHICS AND ACCOUNTABILITY DIVISION. The ethics and accountability division has the responsibility for administration of ch. 11, subch. III of ch. 13, and subch. III of ch. 19.

(2w) ELECTIONS DIVISION. The elections division has the responsibility for the administration of chs. 5 to 10 and 12.

(3g) CHIEF ELECTION OFFICER. The board shall designate an employee of the board to serve as the chief election officer of this state.

(4) EMPLOYEES. All employees of the board shall be nonpartisan.

(5e) BIENNIAL REPORT. The board shall include in its biennial report under s. 15.04 (1) (d) the names and duties of all individuals employed by the board and a summary of its determinations and advisory opinions issued under sub. (6a). Except as authorized or required under sub. (5s) (f) 2., the board shall make sufficient alterations in the summaries to prevent disclosing the identities of individuals or organizations involved in the decisions or opinions. The board may also include in its biennial report any information compiled under s. 11.21 (7). The board shall make such further
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reports on the matters within its jurisdiction and such recommenda-
tions for further legislation as it deems desirable. 

(5f)  ADVICE TO BOARD. The joint committee on legislative
organization shall be advisory to the board on all matters relating to
operation of the board. 

(5s)  ACCESS TO RECORDS. Records obtained or prepared by
the board in connection with an investigation, including the full
text of any complaint received by the board, are not subject to the
right of inspection and copying under s. 19.35 (1), except as pro-
vided in pars. (d) and (e) and except that:

(a)  The board shall permit inspection of records that are dis-
tributed or discussed in the course of a meeting or hearing by the
board in open session.

(b)  Investigatory records of the board may be made public in
the course of a prosecution initiated under chs. 5 to 12, subch. III
of ch. 13, or subch. III of ch. 19.

(c)  The board shall provide information from investigation and
hearing records that pertains to the location of individuals and
assets of individuals as requested under s. 49.22 (2m) by the
department of children and families or by a county child support
agency under s. 59.53 (5).

(d)  If the board commences a civil prosecution of a person for
an alleged violation of chs. 5 to 12, subch. III of ch. 13, or subch.
III of ch. 19 as the result of an investigation, the person who is
the subject of the investigation may authorize the board to make avail-
able for inspection and copying under s. 19.35 (1) records of the
investigation pertaining to that person if the records are available
by law to the subject person and the board shall then make those
records available.

(e)  The following records of the board are open to public
inspection and copying under s. 19.35 (1):

1.  Any record of the action of the board authorizing the filing
of a civil complaint under sub. (2m) (c) 6.

2.  Any record of the action of the board referring a matter to
a district attorney or other prosecutor for investigation or prosecu-
tion.

3.  Any record containing a finding that a complaint does not
raise a reasonable suspicion that a violation of the law has
occurred.

4.  Any record containing a finding, following an investiga-
tion, that no probable cause exists to believe that a violation of the
law has occurred.

(f)  1.  Except as authorized or required under subd. 2., records
obtained in connection with a request for an advisory opinion
issued under s. 19.05 (6a), other than summaries of advisory opin-
ions that do not disclose the identity of individuals requesting such
opinions or organizations on whose behalf they are requested, are
not subject to the right of inspection and copying under s. 19.35
(1).  Except as authorized or required under subd. 2., the board
shall make sufficient alterations in the summaries to prevent disclo-
sing the identities of individuals or organizations involved in the
opinions.

2.  a.  The board may make records under subd. 1. public with
the consent of the individual requesting the advisory opinion or
the organization or governmental body on whose behalf it is
requested.

b.  A person who makes or purports to make public the sub-
stance or any portion of an advisory opinion requested by or on
behalf of the person is deemed to have waived the confidentiality
of the request for an advisory opinion and of any records obtained
or prepared by the board in connection with the request for an
advisory opinion.

3.  The board shall make public advisory opinions and records
obtained in connection with requests for advisory opinions relat-
ing to matters under the jurisdiction of the elections division.

(6a)  ADVISORY OPINIONS. Any individual, either personally or
on behalf of an organization or governmental body, may make a
written or electronic request of the board for an advisory opinion
regarding the propriety under chs. 5 to 12, subch. III of ch. 13, or
subch. III of ch. 19 of any matter to which the person is or may
become a party; and any appointing officer, with the consent of a
prospective appointee, may request of the board an advisory opin-
ion regarding the propriety under chs. 5 to 12, subch. III of ch. 13,
or subch. III of ch. 19 of any matter to which the prospective
appointee is or may become a party. The board shall review a
request for an advisory opinion and may issue a formal written or
electronic advisory opinion to the person making the request.
Except as authorized or required for opinions specified in sub. (5s)
(f) 2., the board’s deliberations and actions upon such requests
shall be in meetings not open to the public. No person acting in
good faith upon an advisory opinion issued by the board is subject
to criminal or civil prosecution for so acting, if the material facts
are as stated in the opinion request. To have legal force and effect,
each advisory opinion issued by the board must be supported by
specific legal authority under a statute or other law, or by specific
case or common law authority. Each advisory opinion shall
include a citation to each statute or other law and each case or com-
mon law authority upon which the opinion is based, and shall spe-
cifically articulate or explain why the parts of the cited authority are
relevant to the board’s conclusion and why they are relevant. The
board may authorize its legal counsel to issue an informal written
advisory opinion or to transmit an informal advisory opinion elec-
tronically on behalf of the board, subject to such limitations as the
board deems appropriate. Every informal advisory opinion shall
be consistent with applicable formal advisory opinions issued by
the board. If the board disagrees with an informal advisory opin-
ion that has been issued on behalf of the board, the board may
withdraw the opinion or issue a revised advisory opinion and no
person acting after the date of the withdrawal or issuance of the
revised advisory opinion is exempted from prosecution under this
subsection if the opinion upon which the person’s action is based
has been withdrawn or revised in relevant degree. Except as
authorized or required under sub. (5s) (f) 2., no member or
employee of the board may public the identity of the individ-
ual requesting a formal or informal advisory opinion or of individ-
uals or organizations mentioned in the opinion. Any person acting
in good faith upon an informal advisory opinion or of individual
opinions that do not disclose the identity of individuals requesting such
opinions or organizations on whose behalf they are requested, are
not subject to the right of inspection and copying under s. 19.35
(1). Except as authorized or required under subd. 2., the board
shall make sufficient alterations in the summaries to prevent disclo-
sing the identities of individuals or organizations involved in the
opinions.

2.  a.  The board may make records under subd. 1. public with
the consent of the individual requesting the advisory opinion or
the organization or governmental body on whose behalf it is
requested.

b.  A person who makes or purports to make public the sub-
stance or any portion of an advisory opinion requested by or on
behalf of the person is deemed to have waived the confidentiality
of the request for an advisory opinion and of any records obtained
or prepared by the board in connection with the request for an
advisory opinion.

3.  The board shall make public advisory opinions and records
obtained in connection with requests for advisory opinions relat-
ing to matters under the jurisdiction of the elections division.

(7)  ADMINISTRATIVE MEETINGS AND CONFERENCES. The
board shall conduct regular information and training meetings at vari-
ous locations in the state for county and municipal clerks and other
election officials. Administrative meetings shall be designed to
explain the election laws and the forms and rules of the board, to
promote uniform procedures and to assure that clerks and other
officials are made aware of the integrity and importance of the
vote of each citizen. The board may conduct conferences relating to
election laws, practice and procedure. The board may charge
persons attending the administrative meetings and conferences
for travel and other expenses incurred in attending conferences, with
the consent of a joint committee on finance as provided in this subsection, the
board shall adopt and modify as necessary a state plan that meets
the requirements of P.L. 107−252 to enable participation by this state in federal financial assistance programs authorized under that law. The board shall adopt the plan and any modifications only after publishing a class I notice under ch. 985 or posting on the Internet a statement describing the proposed plan or modification and receiving public comment thereon. After approval of the proposed plan or any modification of the plan by the board, the board shall submit the proposed plan or modification to the joint committee on finance for the approval of the committee. The board may adopt the proposed plan or modification only if the committee approves the proposed plan or modification.

(11) **AIDS TO COUNTIES AND MUNICIPALITIES.** From the appropriated funds under s. 20.51 (1) (f), the board may make financial assistance to eligible counties and municipalities for election administration costs in accordance with the plan adopted under sub. (10). As a condition precedent to receipt of assistance under this subsection, the board shall enter into an agreement with the county or municipality receiving the assistance specifying the intended use of the assistance and shall ensure compliance with the terms of the agreement. Each agreement shall provide that if the federal government objects to the use of any assistance money provided to the county or municipality under the agreement, the county or municipality shall repay the amount of the assistance provided to the board.

(12) **VOTER EDUCATION.** The board may conduct or prescribe requirements for educational programs to inform electors about voting procedures, voting rights, and voting technology. The board shall conduct an educational program for the purpose of educating electors who cast paper ballots, ballots that are counted at a central counting location, and absentee ballots of the effect of casting excess votes for a single office.

(13) **TOLL-FREE ELECTION INFORMATION EXCHANGE.** (a) The board shall maintain one or more toll-free telephone lines for electors to obtain possible voting 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. (b) The board may maintain a free access system under which an elector who votes under s. 6.96 or 6.97 may ascertain current information concerning whether the elector’s vote has been counted, and, if the vote will not be counted, the reason that it will not be counted.

(14) **INFORMATION FROM COUNTY AND MUNICIPAL CLERKS.** The board may request information from county and municipal clerks relating to election administration, performance of electronic voting systems and voting machines, and use of paper ballots in elections.

(15) **REGISTRATION LIST.** The board is responsible for the design and maintenance of the official registration list under s. 6.36. The board shall require all municipalities to use the list in every election and may require any municipality to adhere to procedures established by the board for proper maintenance of the list.

**5.054 Duties of the legal counsel.** The board’s legal counsel shall:

(1) Whenever a vacancy occurs on the board, call a meeting of the government accountability candidate committee.

(2) Assist the government accountability candidate committee in the performance of its functions.

**5.055 Election assistance commission standards board.** The administrator of the elections division of the board shall, in consultation with the board, appoint an individual to represent this state as a member of the federal election assistance commissions standards board. The administrator shall also conduct and supervise a process for the selection of an election official by county and municipal clerks and boards of election commissioners to represent local election officials of this state as a member of the federal election assistance commission standards board. The administrator shall ensure that the members of the federal election assistance commission standards board representing this state shall at no time be members of the same political party. Upon appointment or election of any new member of the federal election assistance commission standards board representing this state, the administrator shall transmit a notice of that member’s appointment or election to the officer or agency designated by federal law.

**5.056 Matching program with secretary of transportation.** The administrator of the elections division of the board shall enter into the agreement with the secretary of transportation specified under s. 85.61 (1) to match personally identifiable information on the official registration list maintained by the board under s. 6.36 (1) with personally identifiable information maintained by the department of transportation.

**5.06 Compliance review; appeal.** (1) Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act 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 is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the board requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. The complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. The complaint may be accompanied by relevant supporting documents. The
board may conduct a hearing on the matter in the manner pre-
scribed for treatment of contested cases under ch. 227 if it believes
such action to be appropriate.

(2) No person who is authorized to file a complaint under sub.
(1), other than the attorney general or a district attorney, may com-
mence an action or proceeding to test the validity of any decision,
action or failure to act on the part of any election official with
respect to any matter specified in sub. (1) without first filing a
complaint under sub. (1), nor prior to disposition of the complaint
by the board. A complaint is deemed disposed of if the board fails
to transmit an acknowledgment of receipt of the complaint within 5
business days from the date of its receipt or if the board con-
cludes its investigation without a formal decision.

(3) A complaint under this section shall be filed promptly so
as not to prejudice the rights of any other party. In no case may
a complaint be assigned to nominations, qualifications of candidates
or ballot preparation be filed later than 10 days after the complain-
ant knew or should have known that a violation of law or abuse of
discretion occurred or was proposed to occur.

(4) The board may, on its own motion, investigate and deter-
mine whether any election official, with respect to any matter con-
cerning nominations, qualifications of candidates, voting qualifi-
cations, including residence, ward division and numbering, recall,
budget preparation, election administration or conduct of elections,
has failed to comply with the law or abused the discretion vested
in him or her by law or proposes to do so.

(5) Upon receipt of a complaint under sub. (1), or upon its own
motion, the board may order any election official to immediately
transmit to its possession any original documents in the custody of the
official which the board finds to be necessary and relevant to
permit review of compliance with the laws concerning nomina-
tions, qualifications of candidates, ward division and numbering,
recall or ballot preparation or the proper administration of such
laws.

(6) The board may, after such investigation as it deems ap-
propriate, summarily decide the matter before it and, by order, require
any election official to conform his or her conduct to the law,
restrain an official from taking any action inconsistent with the law
or require an official to correct any action or decision incon-
sistent with the law. The board shall immediately transmit a copy
of the order to the official. An order issued under this subsection is
effective immediately or at such later time as may be specified
in the order.

(7) The board may withdraw, modify or correct an order
issued under sub. (6) within a timely period if it finds such action
to be appropriate.

(8) Any election official or complainant who is aggrieved by
an order issued under sub. (6) may appeal the decision of the board
to circuit court for the county where the official conducts business
or the complainant resides no later than 30 days after issuance of
the order. Pendency of an appeal does not stay the effect of an
order unless the court so orders.

(9) The court may not conduct a de novo proceeding with
respect to any findings of fact or factual matters upon which the
board has made a determination, or could have made a determina-
tion if the parties had properly presented the disputed matters to
the board for its consideration. The court shall summarily hear
and determine all contested issues of law and shall affirm, reverse
or modify the determination of the board, according due weight
to the experience, technical competence and specialized knowl-
edge of the board, pursuant to the applicable standards for review
of agency decisions under s. 227.57.

(10) This section does not apply to matters arising in connec-
tion with a recount under s. 9.01.


The plaintiff’s failure to comply with the method of review prescribed by this section
deprecated the circuit court of jurisdiction to hear the plaintiff’s original action
regarding election irregularities. Kuechmann v. LaCrosse School District, 170 Wis.

5.061 Compliance with federal Help America Vote Act. (1) Whenever any person believes that a violation of Title III of
P.L. 107–252 has occurred, is occurring, or is proposed to occur
with respect to an election for national office in this state, that
person may file a written, verified complaint with the board.

(2) If the board receives more than one complaint under sub.
(1) relating to the same subject matter, the board may consolidate
the complaints for purposes of this section.

(3) A complainant under sub. (1) or any of the complainants
in a consolidated complaint under sub. (2) may request a hearing
and the matter shall then be treated as a contested case under ch.
227, except that the board shall make a final determination with
respect to the merits of the complaint and issue a decision within 99
days of the time that the complaint or the earliest of any com-
plaints was filed, unless the complainant, or each of any complain-
ants whose complaints are consolidated, consents to a specified
longer period.

(4) If the board finds the complaint to be without merit, it shall
issue a decision dismissing the complaint. If the board finds that
the violation alleged in the complaint has occurred, is occurring,
or is proposed to occur, the board shall order appropriate relief,
except that the board shall not issue any order under this subsec-
tion affecting the right of any person to hold an elective office or
affecting the canvass of an election on or after the date of that elec-
tion.

History: 2003 a. 265.

5.07 Action to compel compliance. Whenever a violation
of the laws regulating the conduct of elections or election cam-
paigns occurs or is proposed to occur, the attorney general or the
district attorney of the county where the violation occurs or is pro-
posed to occur may sue for injunctive relief, a writ of mandamus
or prohibition, or other such legal or equitable relief as may be
appropriate to compel compliance with the law. No bond is
required in such actions.

History: 1973 c. 334; 1983 a. 484 s. 136m; Stats. 1983 s. 5.07; 1985 a. 304.

5.08 Petition for enforcement. In addition to or in lieu of
filing a complaint, any elector may file a verified petition alleging
such facts as are within his or her knowledge to indicate that an
election official has failed or is failing to comply with any law reg-
lating the conduct of elections or election campaigns or proposes to
act in a manner inconsistent with such a law, and requesting that
an action be commenced for injunctive relief, a writ of mandamus
or prohibition, or other such legal or equitable relief as may be
appropriate to compel compliance with the law. The petition shall
be filed with the district attorney for the county having jurisdiction
to prosecute the alleged failure to comply under s. 978.05 (1) and
(2). The district attorney may then commence the action or dis-
miss the petition. If the district attorney declines to act upon
the petition or if the district attorney fails to act upon the petition
within 15 days of the date of filing, the petitioner may file the same
petition with the attorney general, who may then commence the
action.


5.081 Petition for enforcement of voting rights. The
attorney general shall accept a verified petition from any person
alleging failure to comply with section 2 of the federal voting
rights act, 42 USC 1973 (a) and (b). The attorney general may
commence an action or proceeding in any court of competent
jurisdiction on behalf of any elector of this state whose rights
under 42 USC 1973 (a) and (b) are violated.

History: 1985 a. 312.

5.09 Certification of documents. Whenever the board is
authorized or required to make a certification of any document in
the custody of the board, and the authority to make the certifica-
tion is lawfully delegated to the board’s legal counsel, the legal
counsel may, personally or through an employee authorized by the
legal counsel, affix his or her signature by means of a stamp, machine impression, reproduction print or similar process. This section does not apply to certificates of election.


5.10 Presidential electors. Although the names of the electors do not appear on the ballot and no reference is made to them, a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector’s vote is cast. Under chs. 5 to 12, all references to the presidential election, the casting of votes and the canvassing of votes for president, or for president and vice president, mean votes for them through their pledged presidential electors.

History: 1973 c. 334 s. 2; Stats. 1973 s. 5.10; 1977 c. 26; 1979 c. 89, 311.

5.15 Division of municipalities into wards. (1) (a) 1. Every city, village, and town in this state shall by its common council or village or town board, respectively, be divided into wards as provided in this section, except as authorized in sub. (2). The boundaries of the wards established under this section, and the number assigned to each ward, are intended to be as permanent as possible, and to this end each ward shall when created contain a population at a convenient point within the applicable population range under sub. (2) (b), with due consideration for the known trends of population increase or decrease within that part of the municipality in which the ward is located.

2. Once established, the boundaries of each ward shall remain unchanged until a further decennial federal census of population indicates that the population of a ward is then above or below the applicable population range or until the ward boundaries are required to be changed to permit creation of supervisory or aldermanic districts of substantially equal population or to enhance the participation of members of a racial or language minority group in the political process and their ability to elect representatives of their choice.

3. If the population of a ward has increased above the maximum of its population range or if the population of a ward must be decreased for a reason specified in sub. 2., the ward shall be divided into 2 or more wards in compliance with sub. (2) (b). If the population of a ward has decreased below the minimum of its population range or if the population of a ward must be increased for a reason specified in sub. 2., the ward shall, if possible, be combined with an adjoining ward, or the underpopulated ward and one adjoining ward shall be combined and together subdivided into 2 or more wards in compliance with sub. (2).

(b) Except as authorized in sub. (2) (a), within 60 days after the receipt of a tentative supervisory district plan and written statement, if any, from the county board of each county in which a municipality is located, the governing body of the municipality shall adjust its wards according to the schedule shown in sub. (2). All territory contained within the municipality, and only the territory so contained, on August 1 following the year of the federal decennial census shall be contained within a ward. Except as authorized in sub. (2), each ward shall consist of whole blocks. To suit the convenience of the voters residing therein each ward shall, as far as practicable, be kept compact and observe the community of interest of existing neighborhoods and other settlements. All territory within a ward shall be contiguous, except for island territory as defined in sub. (2) (f) 3. Enactment or adoption of a division ordinance or resolution requires the affirmative vote of a majority of the members of the governing body.

(c) The wards established by municipal governing bodies under this section on the basis of the published results of each federal decennial census of population shall govern the adjustment of supervisory districts under s. 29.10 (2) (a) and (3) (b) and of aldermanic districts under s. 62.08 (1) for the purpose of local elections beginning on January 1 of the 2nd year commencing after the year of the census until revised under this section on the basis of the results of the next decennial census of population unless adjusted under sub. (2) (f) 4., (6) (a) or (7), or unless adjusted, as a matter of statewide concern, in the enactment of legislative districts under article IV, section 3, of the constitution on the basis of the most recent decennial census of population.

(d) Every ward shall be wholly contained within a single county.

(2) (a) Except as required by par. (d), no city electing its common council at large in which the total population is less than 1,000, and no village or town in which the total population is less than 1,000 is required to be divided into wards under this section, but any such city, village or town may divide itself into wards if the creation of wards facilitates the administration of elections. No village or town located in a county having only one town is required to be divided into wards under this section.

(b) 1. In any city in which the population is at least 150,000, each ward shall contain not less than 1,000 nor more than 4,000 inhabitants.

2. In any city in which the population is at least 39,000 but less than 150,000, each ward shall contain not less than 800 nor more than 3,200 inhabitants.

3. In any city, village or town in which the population is at least 10,000 but less than 39,000, each ward shall contain not less than 600 nor more than 2,100 inhabitants.

4. In any city, village or town in which the population is less than 10,000, each ward shall contain not less than 300 nor more than 1,000 inhabitants.

(bm) Every city electing the members of its common council from aldermanic districts shall assemble the blocks wholly or partially contained within the city into wards that will enable the creation of aldermanic districts that are substantially equal in population.

(c) If the population of a block exceeds the maximum population for a ward otherwise specified in this subsection, such block shall be constituted a ward by itself, except that if the population of a block substantially exceeds the population of proposed aldermanic districts in a city so that, if the block were to constitute an aldermanic district, the populations of the aldermanic districts in the city would not be substantially equal, the city shall divide the block to permit assembly into wards that will enable creation of aldermanic districts that are substantially equal in population.

(cm) Any division of blocks under this section shall be based on the best evidence available. In this paragraph, “best evidence” includes, but is not limited to, the population of the block and other information received from the U.S. bureau of the census and such data as number of housing units, utility connections and vehicle registrations or a special census conducted locally. For each ward so established, the population estimate shall be calculated with the results of the most recent federal decennial census, so that the total population reported for all wards in the municipality agrees with the census results.

(d) Every municipality shall make a good faith effort to accommodate the tentative plan submitted by the county or counties in which it is located under s. 29.10 (2) (a) or (3) (b) 1., and shall divide itself into wards in such a manner that will permit the creation of county supervisory districts in accordance with the population requirements for the plan specified in s. 29.10 (2) (a) or (3) (b) 1.

(e) Notwithstanding par. (b), if territory is detached from a city, village or town after adoption of a decennial ward plan, and the remaining portion of the ward to which it was attached falls below the prescribed minimum population for the applicable range, the remaining portion of the population may be constituted a ward by itself.

(f) Notwithstanding par. (b), any city, village or town may establish a ward below the prescribed minimum population for the applicable range whenever the proposed ward is established under par. (a), (d) or (e) or whenever the proposed ward contains solely:

1. That part of a city or village situated in a county other than the county in which the major part of the municipality is located.

Text from the 2005–06 Wis. Stats. database updated by the Legislative Reference Bureau. Only printed statutes are certified under s. 35.18 (2), stats. Statutory changes effective prior to 10–2–08 are printed as if currently in effect. Statutory changes effective on or after 10–2–08 are designated by NOTES. Report errors at (608) 266–3561, FAX 264–6948, http://www.legis.state.wi.us/rsb/stats.html
2. That part of a city, village or town belonging to a school district other than the school district to which the major part of the municipality belongs.

3. Island territory containing a resident population. In this subdivision, “island territory” means territory surrounded by water, or noncontiguous territory which is separated by the territory of another municipality or by water, or both, from the major part of the municipality to which it belongs.

4. New territory which becomes a part of a city, village or town after the adoption of a decennial ward plan.

(g) If a block is affected by an annexation or detachment which establishes a municipal boundary that subdivides the block, the municipalities in which the block is contained shall incorporate only the portion of the block contained within their boundaries in their ward plans.

(a) The division ordinance or resolution shall number all wards in the municipality in whole numbers in consecutive order, beginning with the number one, shall designate the polling place for each ward, and shall describe the boundaries of each ward consistent with the conventions set forth in s. 4.003. The ordinance or resolution shall be accompanied by a list of the block numbers used by the U.S. bureau of the census that are wholly or partly contained within each ward, with any block numbers partly contained within a ward identified, and a map of the municipality which illustrates the revised ward boundaries.

(b) Within 5 days after adoption or enactment of an ordinance or resolution under this section, the municipal clerk shall transmit one copy of the ordinance or resolution to the county clerk of each county in which the municipality is contained, accompanied by the list and map specified in par. (a). If the population of the municipality exceeds 10,000, the municipal clerk shall furnish one copy to the legislative reference bureau at the same time. Each copy shall identify the name of the municipality and the county or counties in which it is located.

When a town is divided into wards, the annual town meeting shall be held in a location authorized under s. 60.11 (3) (a).

(a) Following any municipality-wide special federal census of population, the governing body of the municipality in which the special census was held may, by ordinance or resolution, adjust the ward boundaries, but no ward line adjustment may cross the boundary of an assembly district. The municipal clerk shall transmit copies of the ordinance or resolution making the adjustment in compliance with sub. (4) (b).

(b) No later than June 30 of each odd-numbered year, the board of election commissioners of a municipality to which an elderly or handicapped elector resides may reassign the elector to a polling place within the municipality other than the polling place serving the elector’s residence in order

(3) Polling places shall be established for each September primary and general election at least 60 days before the election, and for each other election at least 30 days before the election. Ward divisions shall be held at the polling places provided in this section. The places chosen shall be public buildings, unless the use of a public building for this purpose is impracticable or the use of a nonpublic building better serves the needs of the electorate, as determined by the authority charged with the responsibility for establishing polling places under sub. (2).

(2) In cities over 500,000 population, polling shall be at the places established by the board of election commissioners. In all other cities and in villages and towns, polling shall be at the places established by the governing body.

(5) (a) Except as authorized in par. (b), all electors within a ward shall vote at the same polling place.

(b) The municipal clerk or board of election commissioners of a municipality in which an elderly or handicapped elector resides may reassign the elector to a polling place within the municipality other than the polling place serving the elector’s residence in order

(7) If a new town is created or if part of a town is annexed to a city or village during a decennial period after the period for ward adjustments under sub. (1) (b), the town board of any town to which territory is attached or from which territory is detached, without regard to the time provisions of sub. (1) (b), may, by ordinance or resolution, adjust the wards in that town, but no ward line adjustment may cross the boundary of an assembly district. The town clerk shall transmit copies of the ordinance or resolution making the adjustment in compliance with sub. (4) (b).

8) Until divided, all elections are held in the established wards.


City and county apportionment is discussed. City of Janesville v. Rock County, 107 Wis. 2d 187, 319 N.W.2d 891 (Ct. App. 1982).

The court properly voided the city’s plan and adopted the county’s plan, even though the county did not adopt the plan within 60 days of receiving census data.

County of La Crosse v. City of La Crosse, 108 Wis. 2d 187, 319 N.W.2d 891 (Ct. App. 1982).
to permit the elector to utilize a polling place that is accessible to elderly or handicapped individuals.

(c) The electors of more than one ward in the same municipality may vote at a single polling place.


5.35 Polling place requirements. (1) NATIONAL FLAG. On election days, every polling place shall properly display the national flag during all hours the polls are open.

(2) VOTING BOOTHS. There shall be one voting booth for every 200 electors who voted at the last general election. The booths shall have a surface on which to write or work and be sufficiently enclosed to assure privacy for the elector and anyone lawfully assisting the elector while marking the elector’s ballot.

(3) BALLOT BOXES. Where the voting procedure makes it necessary, there shall be a separate ballot box for each form of ballot at each polling place. There shall be a suitable lock and key for each, and an opening no larger than is sufficient to receive a single ballot for a single folded ballot if the box is used for deposit of paper ballots. If the electors of more than one ward use the same polling place, there shall be separate ballot boxes provided for the electors of each ward, unless combined ballot boxes are authorized in accordance with s. 5.15 (6) (b).

(4) LAYOUT; ORGANIZATION. All voting booths and machines shall be placed apart from other activities in the polling place, with their exteriors in full view of the election officials. The proper election officials, persons observing the proceedings under s. 7.41, persons assisting voters under s. 6.82 (2) and electors receiving, preparing or depositing their ballots or casting their votes on the machines are permitted in the voting area. Except where assistance is authorized, only one elector at a time is permitted in a voting booth or machine.

(5) ACTIVITIES RESTRICTED. No polling place may be situated so as to interfere with or distract election officials from carrying out their duties. The municipal clerk and election inspectors shall prevent interference with and distraction of electors at polling places.

(6) POSTING REQUIREMENTS. (a) At each polling place in the state, the municipal clerk or board of election commissioners shall post the 11 printed, materials, prepared so that they may be readily observed by electors entering the polling place or waiting in line to vote:

1. The relevant portions of the voting instructions in the type B notice for the election as specified in s. 10.02 (3) and, for each referendum on the ballot, the text of the type C notice specified in s. 10.01 (2) (c).

2. A copy of the election fraud laws provided in s. 12.13 (1) and (3) (intro), (d), (f), (g), (k), (L), (o), (q), (r), (u), (v) and (x), together with the applicable penalties provided in s. 12.60 (1).

2m. General information prescribed by the board on federal laws relating to election fraud and misrepresentation in federal elections.

3. Two sample ballots prepared under s. 5.66 (2).

4. The date of the election and the hours during which the polling place is open.

4a. Instructions prescribed by the board for electors for whom proof of residence under s. 6.34 is required under s. 6.55 (2).

4b. General information prescribed by the board concerning voting rights under applicable state and federal laws, including the method of redress for any alleged violations of those rights.

5. Any other voting information directed to be posted by the board.

(b) At each polling place in the state where a consolidated ballot under s. 5.655 is used or an electronic voting system is utilized at a partisan primary election incorporating a ballot upon which electors may mark votes for candidates of more than one recognized political party or for candidates of a recognized political party and independent candidates, the municipal clerk or board of election commissioners shall prominently post a sign in the form prescribed by the board warning electors in substance that on any ballot with votes cast for candidates of more than one recognized political party or any ballot with votes cast for candidates of a recognized political party and independent candidates, no votes cast for any candidates for partisan office will be counted unless a preference for a party or for the independent candidates is made. If the elector designates a preference, only votes cast for candidates of that preference will be counted.

(c) At each polling place located in a municipality that is served by more than one polling place for an election, the municipal clerk or board of election commissioners shall prominently post a map of the geographic area served by the polling places for that election. The posting shall clearly show the boundaries of the ward or wards served by the polling place for that election.


5.36 Notice of voting by individuals with disabilities. Any individual with a disability may notify a municipal clerk that he or she intends to vote at a polling place on election day and may request that a specific type of accommodation be provided that will facilitate his or her voting.

History: 2003 a. 265.

5.37 Voting machine requirements. (1) Voting machines shall give every elector a reasonable opportunity to vote for any person for any office and on any proposition the elector is entitled to vote on, assure privacy to the elector so no one will know how the elector is voting or has voted, preclude the electors from voting for persons or propositions upon which they are not entitled to vote and from voting more than once for the same office or on the same proposition. Voting machines shall be constructed to lock so they cannot be manipulated, tampered with, or show the number of votes registered for any candidate or proposition while voting is in progress. The machines shall provide a method for electors to vote a straight party ticket, shall permit voting a split ticket and shall record each vote cast.

When 2 or more wards or aldermanic districts are joined to use a voting machine, under s. 5.15 (6) (b), the machine shall be constructed to allow the electors to vote for all nominated candidates and issues for their aldermanic district or ward, but for no other.

(3) For presidential electors one device shall be provided to vote for all of one party’s electoral candidates at the same time. The device shall be opposite or adjacent to the names of the party’s candidates for president and vice president.

(4) Voting machines may be used at primary elections when they comply with subs. (1) and (2) and the following provisions: All candidates’ names entitled to appear on the ballots at the primary shall appear on the machine; the elector cannot vote for candidates of more than one party, whenever the restriction applies, and an elector who votes for candidates of any party may not vote for independent candidates at the September primary; the elector may secretly select the party for which he or she wishes to vote, or the independent candidates in the case of the September primary; the elector may vote for as many candidates for each office as he or she is lawfully entitled to vote for, but no more.

(5) Voting places may have more than one voting machine.

History: 1971 c. 304 s. 29 (1), (2); 1977 c. 107, 427; 1981 c. 314; 1983 a. 484; 1991 a. 316; 1999 a. 182.

State action in presidential candidate selection. 1976 WLR 1269.

5.40 Use of voting machines or systems. (1) Except as permitted in sub. (3) or as required in subs. (4) to (6), the governing body or board of election commissioners of every municipality with a population of 10,000 or more before July 1, 1995, or of 7,500 or more thereafter shall require the use of voting machines or electronic voting systems in every ward in the municipality at every election. Any other governing body or board of election commissioners may adopt and purchase voting machines or elec-
5.40 ELECTIONS — GENERAL PROVISIONS; BALLOTS & VOTING


(2) Only voting machines complying with s. 5.37 or electronic voting systems approved under s. 5.91 may be used in an election in this state.

(3) Notwithstanding sub. (1), any municipality may elect to utilize paper ballots and voting booths instead of voting machines or an electronic voting system:

(a) For any territory which is included in a portion of a congressional district, legislative district, county supervisory district, school district, technical college district, sewerage district or sanitary district contained within the municipality for so long as the number of electors residing in the territory does not exceed 100.

(b) Whenever the municipality is precluded under s. 7.23 (2) from clearing the recorders on a sufficient number of voting machines to serve the electors at the election.

(c) Whenever such action is authorized under s. 7.15 (6).

(d) Whenever the municipal clerk or board of election commissioners reassigns an elector to a polling place other than the one serving the elector’s residence under s. 5.25 (5) (b).

(4) Notwithstanding sub. (1), a municipality which utilizes voting machines at a polling place shall not utilize a voting machine to receive the ballot of an elector who receives assistance under s. 6.82 (1) (a) or whose vote is challenged under ss. 6.92 to 6.94.

(5) A municipality which utilizes voting machines at a polling place shall not utilize the machines to receive the vote of an elector who declares to the chief inspector that, due to physical disability, the elector is unable to depress a button or lever on a machine.

(5m) Notwithstanding sub. (1), the governing body of a municipality which uses voting machines or an electronic voting system may petition the board for permission to use paper ballots and voting booths for a specific election, and the board may grant such a request.

(6) A municipality which utilizes voting machines or an electronic voting system at a polling place may permit use of the machines or system by electors voting under s. 6.15 only as authorized under s. 6.15 (3).

(7) Whenever a municipality adopts and purchases voting machines or an electronic voting system, or adopts and purchases a different type of voting machine or electronic voting system from the type it was previously using, the municipal clerk or executive director of the municipal board of election commissioners shall promptly notify the county clerk or executive director of the county board of election commissioners and the administrator of the elections division of the board in writing.


SUBCHAPTER II

BALLOT FORM

5.51 General provisions. (1) The type face used on all paper ballots shall be easy to read.

(2) The paper used for ballots shall be 35 pounds per ream for sheets 24 inches by 36 inches. If a different size sheet is used, the weight per ream shall be proportioned accordingly, but shall meet this standard. This subsection does not apply to ballots used with electronic voting systems.

(3) All paper ballots shall be of sufficient width and length to provide space for all matter required to be printed on them. Except on ballots used with electronic voting systems, all ballot columns shall be separated by lines at least one-eighth inch in width.

(4) No stickers may be placed on a ballot by election officials except under s. 7.37 (6). Any other stickers applied by them shall not be counted.

(5) Each official ballot shall be printed on paper of uniform color. Different colors shall be used to distinguish office and referendum ballots and different colors may be used to distinguish separate ballots for different offices. Sample ballots shall be printed on a different color paper than the official ballots, and need not have the endorsement and certificate.

(6) All candidates’ names for the same office shall be placed, projected or composed on the ballot in the same size, style and color of type. The style and size of type shall conform substantially to the official ballot forms prescribed by the board under s. 7.08 (1) (a).

(7) In partisan primary elections, all ballots shall be of uniform color and size, and the same type of paper shall be used for all ballots.

(8) Unless otherwise specifically provided, the form of all ballots shall conform to the ballot forms prescribed by the board under s. 7.08 (1) (a).


5.52 Multi-candidate elections. If more than one individual is to be elected to the same office from the same jurisdiction or district, the ballot shall provide at the top of the column or to the right of the row for that office: “Vote for not more than ... candidates.”

History: 1985 a. 304.

5.53 Voting machine ballots. (1) Voting machine ballots shall be placed, projected or composed on a board or screen inside the machine, under s. 5.64 and may be arranged in either columns or rows. The type face shall be easy to read, and the type size may be no smaller than 8 point.

(2) Where separate ballots are provided for, the names or questions shall be placed in separate columns or rows upon the machines so they are voted on separately, except as otherwise provided for referenda under s. 5.64 (2) (c).

History: 1979 c. 260, 311; 1981 c. 377 ss. 4, 5; 1999 a. 182.

5.54 Notice to electors. Every ballot, except a voting machine ballot, shall bear substantially the following information on the face: “NOTICE TO ELECTORS: This ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk.”


5.55 Information. On every ballot, except a voting machine ballot, shall be printed “Official .... Ballot” or “Official .... Ballot for ....” followed by the designation of the polling place for which the ballot has been prepared, the date of the election, and the official endorsement and blank certificates. The number of the ward or wards or aldermanic district, if any, and the name of the municipality may be omitted in printing and stamped or written on the ballots at any location which is clearly visible at the option of the county clerk. Printed information and initials shall appear on the back and outside of the ballot.


5.56 Multiple columns and rows. Whenever the number of candidates for any office requires the use of more than one row or column on a voting machine or whenever the official or agency having the responsibility to determine ballot positions determines that the number of candidates for an office requires the use of more than one column on a ballot, the official or agency having such responsibility shall require that the rows or columns be rotated in such a manner that all rows are positioned on top, or all columns are positioned to the left, in an equal number of wards or election districts. If the number of wards and election districts in which voting for an office is conducted is not equally divisible, the position of the rows or columns in the remaining wards or election districts shall be determined by the official or agency by the drawing
of lots. The number of columns or rows shall be determined at the same time that the positions of the candidates’ names are determined for each primary and election.

History: 1981 c. 377 s. 5.

5.58 Spring primary ballots. (1a) Generally. At spring primary elections the ballots under subs. (1b) to (2r), when necessary, shall be provided for each ward, except as authorized in s. 5.655. Except as provided under sub. (2r), only nonpartisan candidates nominated for office by nomination papers shall have their names placed on the official spring primary ballot under the proper office designation, but the ballots shall allow room for write-in candidates.

(1b) Municipal; county supervisor ballots. (am) There shall be separate ballots for municipal and county primaries, except as authorized in s. 5.655.
(bm) For all cities the official spring primary ballot shall be arranged by the municipal clerk, using the same method as that used by the board under s. 5.60 (1) (b).
(cm) For all counties, the names of candidates for the seat to be filled shall be arranged by the county clerk or by the executive director of the county board of election commissioners of the county having the largest portion of the population in the jurisdiction served by the judge.
(1c) Municipal judge. There shall be a separate ballot for municipal judges if they are elected under s. 755.01 (4), except as authorized in s. 5.655. Arrangement of the names on the ballot shall be determined by the county clerk or the executive director of the county board of election commissioners of the county having the largest portion of the population in the jurisdiction served by the judge.
(1g) School district. (a) There shall be a separate ballot for school district officers when so required, except as authorized in s. 5.655.
(b) In 1st class cities, the names of the candidates for the seat of the member elected at-large to the board of school directors shall be placed on the official city primary ballot and, except as authorized in s. 5.655, there shall be a separate ballot giving the names of candidates for any seat to be filled on the board of school directors from any election district. All names of candidates for the at-large seat shall be placed in one or more separate columns or rows on the ballot.
(c) The arrangement of candidates for school board seats shall be determined by the school district clerk or the executive director of the city board of election commissioners by the drawing of lots not later than the 1st Tuesday in January, or the next day if the first Tuesday is a holiday. The method of determining arrangement shall be the same as provided in s. 5.60 (1) (b). Sufficient space shall be provided on the ballot for write-in candidates.
(1r) Town sanitary district commission. There shall be a separate ballot for members of the town sanitary district commission if commissioners are elected under s. 60.74 and the boundaries of the district are not coterminous with one or more towns, except as authorized in s. 5.655. Candidates for different seats shall be listed in separate columns or rows if more than one seat is contested in any election. Arrangement of the names on the ballot shall be determined by the town clerk of the town whose board of supervisors directs the election, in the same manner as provided in s. 5.60 (1) (b).
(2) State superintendent of public instruction; judiciary; county executive, and county supervisors. There shall be one separate ballot for state superintendent, judicial officers, county executive under s. 59.17 and county supervisor, except as authorized in s. 5.655. In counties having a population of 500,000 or more, the ballot also shall include those offices under s. 8.11 (2) and (2m). The arrangement of names of candidates for state superintendent, justice, court of appeals judge and circuit court judge shall be determined by the board in the manner specified in s. 5.60 (1) (b). Arrangement of the names of candidates for county executive and county supervisor shall be determined by the county clerk or by the executive director of the county board of election commissioners in the manner specified in s. 5.60 (1) (b).
(2m) Metropolitan sewerage commission. Except as authorized in s. 5.655, there shall be a separate ballot for members of the metropolitan sewerage commission if commissioners are elected under s. 200.09 (11) (am), with candidates for different seats listed in separate columns or rows if more than one seat is contested at any election. Arrangement of the names on the ballot shall be determined by the board.
(2r) Ballots for presidential vote. (am) Except as authorized in s. 5.655, there shall be a separate ballot for each recognized political party filing a certification under s. 8.12 (1), listing the names of all potential candidates of that party determined under s. 8.12 and affording, in addition, an opportunity to the voter to nominate another potential candidate by write-in vote or vote for an uninstructed delegation to the party convention. The order of presidential candidates on the ballot shall be determined by lot by or under the supervision of the board. Each voter shall be given the ballots of all the parties participating in the presidential preference vote, but may vote on one ballot only.
(bm) Except as authorized in s. 5.655, a separate ballot shall be provided for use in each voting district.
(c) The official ballots for the presidential preference vote shall be securely fastened together at the bottom. The party receiving the greatest number of votes for governor at the preceding election shall have its ticket placed on top and the remaining party ballots shall follow in the same manner. A facsimile ballot notice shall be published as provided in s. 10.02.
(3) Names on spring ballot. Only 2 candidates for state superintendent, for any judicial office, for any elected seat of a metropolitan sewerage commission or town sanitary district commission, in counties having a population of 500,000 or more only 2 candidates for member of the board of supervisors within each district, in counties having a population of less than 500,000 only 2 candidates for each member of the county board of supervisors from each district or numbered seat or only 4 candidates for each 2 members of the county board of supervisors from each district whenever 2 supervisors are elected to unnumbered seats from the same district, in 1st class cities only 2 candidates for any at-large seat and only 2 candidates from any election district to be elected to the board of school directors, in school districts electing school board members to numbered seats, or pursuant to an appointment plan or district representation plan, only 2 school board candidates for each numbered seat or within each district, and twice as many candidates as are to be elected members of other school boards or other elective officers receiving the highest number of votes at the primary shall be nominees for the office at the spring election. Only their names shall appear on the official spring ballot.

History: 1971 c. 304 ss. 6 to 8, 29 (2); 1973 c. 134, 243; 1973 c. 334 ss. 57 (2); 1973 c. 340; 1975 c. 93, s. 187, 272, 445, 449; 1979 c. 32, 221, 260; 1981 c. 20, 377; 1983 a. 484; 1983 a. 532 s. 36; 1985 a. 29, 3202 (56); 1985 a. 89, 225; 1985 a. 304 ss. 27, 27m; 155; 1989 a. 192, 290; 1991 a. 5; 1993 a. 266, 1995 a. 16 s. 2; 1997 a. 27 s. 9145 (1); 1995 a. 201, 219; 1997 a. 35; 1999 a. 150 s. 672; 1999 a. 182; 2003 a. 24 ss. 3, 4; 2005 a. 149.

5.60 Spring election ballots. At spring elections all of the following ballots, when necessary, shall be provided for each ward, except as authorized in s. 5.655:
(1) State superintendent; judiciary; county executive and county supervisors. (ag) There shall be one separate ballot for state superintendent, judicial officers, county executive, and county supervisor, except as authorized in s. 5.655. For county supervisor, the ballot shall be prepared in accordance with ss. 5.58 (2) and 59.10 (3). Arrangement of the names of candidates for county executive, county supervisor, and municipal judge, if the judge is elected under s. 755.01 (4), shall be determined by the county clerk or the executive director of the county board of election commissioners determining ballot arrangement under s. 5.58 (1c), in the manner prescribed in par. (b).
(ar) The names of candidates for the same office shall be placed in the same column. No party designation may appear on the official ballot. Unless no candidate is certified to appear on the ballot for a state office, a space shall be provided on the ballot for electors to write in the name of a person for each office, regardless of whether there is a primary for that office.

(b) The board shall certify the candidates’ names and designate the official ballot arrangement for candidates for state superintendent, justice, court of appeals judge, circuit judge and, if commissioners, are elected under s. 200.09 (11) (am), the metropolitan sewerage commission. The arrangement of names of all candidates on the ballot whose nomination papers are filed with the board shall be determined by the board by the drawing of lots not later than the 2nd Tuesday in January, or the next day if the first Tuesday is a holiday. Whenever a primary is held for an office, a 2nd drawing of all candidates for that office shall be held by or under the supervision of the board not later than the 3rd day following the completion of the primary canvass to determine the arrangement of candidates on the election ballot.

(c) When 2 or more judges of the same court are to be elected, the official ballot shall contain the names of all candidates, shall state the number of judges to be elected and the number of candidates for whom each elector may vote. Each candidacy shall show the branch being filled.

(2) MUNICIPAL JUDGE. If the election is under s. 755.01 (4), there shall be a separate ballot listing the names of all of the candidates, except as authorized in s. 5.655.

(3) CITY. (ag) Except as authorized in s. 5.655, there shall be a separate ballot giving the names of all candidates for city offices, printed in the same form as prescribed by the board under s. 7.08 (1) (a). City election ballots may vary in form to conform to the law under which an election is held.

(b) The city clerk or executive director of the city election commission shall arrange the official city ballot under s. 5.62 (4).

(4) SCHOOL DISTRICT. (a) There shall be a separate ballot for school district officers when so required, except as authorized in s. 5.655.

(b) In 1st class cities, the names of the candidates for the seat of the member elected at–large to the board of school directors shall be placed on the official city ballot and there shall be a separate ballot giving the names of the candidates for any seat to be filled on the board of school directors from any election district, except as authorized in s. 5.655. The names of candidates for the at–large seat shall be placed in the same column or row on the ballot.

(c) The arrangement of candidates for school board seats shall be determined by the school district clerk or the executive director of the city board of election commissioners by the drawing of lots not later than the 2nd Tuesday in January, or the next day if the first Tuesday is a holiday, if there is no primary, or not later than the 3rd day following the completion of the primary canvass if a primary is held. The method of determining arrangement shall be the same as provided in sub. (1) (b). Sufficient space shall be provided on the ballot for write–in candidates.

(4m) METROPOLITAN SEWERAGE COMMISSION. A separate ballot shall list the names of all candidates for metropolitan sewerage commission seats, if commissioners are elected under s. 200.09 (11) (am), except as authorized in s. 5.655. The names for the different seats shall be placed in separate columns or rows if more than one seat is contested at any election.

(5) VILLAGE. (ag) There shall be a separate ballot giving the names of all candidates for village offices, except as authorized in s. 5.655.

(ar) The offices to be filled shall be arranged on the official ballot in the order they are named in the statutes creating them. The names of the candidates shall be arranged by using the same method as that used by the board under sub. (1) (b). Sufficient space shall be left under each office for write–in candidates.

(b) Only persons nominated under s. 8.05 shall be placed on the official ballots. If no nominations are made, the spaces for this office shall be left blank.

(6) TOWN. (a) Except as authorized in s. 5.655, there shall be a separate ballot giving the names of all candidates for elective town offices in the form prescribed by the board under s. 7.08 (1) (a). There shall be 2 ballot forms. One ballot form shall be used for the election of supervisors to numbered seats and one ballot form shall be used for the election of supervisors to unnumbered seats. On the ballot used for the election of supervisors to unnumbered seats, all supervisor candidates shall be listed together and the voting instructions shall state “Vote for not more than [insert number of supervisors to be elected] candidates”. All towns shall elect their supervisors to unnumbered seats unless the annual town meeting adopts a plan to elect supervisors to numbered seats. The names of candidates for town office shall be arranged by using the same method as that used by the board under sub. (1) (b). A space shall be provided under each office on the ballot for a write–in candidate.

(b) Only the names of individuals nominated under s. 8.05 may be placed on the official ballot. If no nominations for an office are made, the space for that office shall be left blank.

(6m) TOWN SANITARY DISTRICT COMMISSION. Except as authorized in s. 5.655, a separate ballot shall list the names of all candidates for town sanitary district commission seats, if commissioners are elected under s. 60.74 and the boundaries of the district are not coterminous with the boundaries of one or more towns. The names for different seats shall be placed in separate columns or rows if more than one seat is contested at any election.

(7) REFERENDUM BALLOTS. Except as authorized in s. 5.655, there shall be a separate ballot setting forth all propositions requiring a vote in the form and manner provided by s. 5.64.


The national democratic party has a protected right of political association and may not be compelled to seat delegates chosen in an open primary in violation of the party’s rules. Democratic Party of U.S. v. Wisconsin, 450 U.S. 107 (1981).

5.62 September primary ballots. (1) (a) At September primaries, the following ballot shall be provided for the nomination of candidates of recognized political parties for national, state and county offices and independent candidates for state office in each ward, in the same form as prescribed by the board under s. 7.08 (1) (a), except as authorized in s. 5.655. The ballots shall be made up of the several party tickets with each party entitled to participate in the primary under par. (b) or sub. (2) having its own ball–lot, except as authorized in s. 5.655. The independent candidates for state office other than district attorney shall have a separate ballot for all such candidates as under s. 5.64 (1) (e), except as authorized in s. 5.655. The ballots shall be secured together at the bottom. The party ballot of the party receiving the most votes for president or governor at the last general election shall be on top with the other parties arranged in descending order based on their votes for president or governor at the last general election. The ballots of parties qualifying under sub. (2) shall be placed after the parties qualifying under par. (b), in the same order in which the parties filed petitions with the board. Any ballot required under par. (b) 2. shall be placed next in order. The ballot listing the independent candidates shall be placed at the bottom. At polling places where voting machines are used, each party and the independent candidates shall be represented in one or more separate columns or rows on the ballot. At polling places where an electronic voting system is used other than an electronic voting machine, each party and the independent candidates may be represented in separate columns or rows on the ballot.
15  Updated 05–06 Wis. Stats. Database
Not certified under s. 35.18 (2), stats.

ELECTIONS — GENERAL PROVISIONS; BALLOTS & VOTING

5.64 General election ballots. At general elections all of the following ballots, when necessary, shall be provided for each ward:

(1) OFFICIAL BALLOT. (ag) Except as authorized in s. 5.655, there shall be a separate ballot giving the names of all candidates for president and vice president and for statewide, congressional, legislative, and county offices in the same form as prescribed by the board under s. 7.08 (1) (a).

(a) The ballot shall permit an elector to do any of the following:

a. Vote a straight party ticket for president and vice president, whenever those offices are contested, and for all statewide, congressional, legislative, and county offices.

b. Vote for individual candidates for each office.

c. Vote for a person whose name does not appear on the ballot for any office.

(2) PAROCHIAL BALLOT. (ag) The county clerk or county board of election commissioners shall provide a separate ballot giving the names of all candidates for the county office for which the ballot was requested under s. 5.65 (7) (a) 1. The ballot shall permit an elector to do any of the following:

a. Vote a straight party ticket for president and vice president, whenever those offices are contested, and for all statewide, congressional, legislative, and county offices.

b. Vote for individual candidates for each office.

c. Vote for a person whose name does not appear on the ballot for any office.

(3) OTHER BALLOTS. (ag) The board shall designate the official primary ballot arrangement for statewide offices and district attorney within each judicial election district by using the same procedure as provided in s. 5.60 (1) (b). On each ballot and on each separate column or row on the ballot, the candidates for office shall be listed together with the offices which they seek in the following order whenever these offices appear on the September primary ballot: governor, lieutenant governor, attorney general, secretary of state, state treasurer, U.S. senator, U.S. representative in congress, state senator, representative to the assembly, district attorney and the county offices. Below the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers.

(4) County clerk or county board of election commissioners shall designate the official primary ballot arrangement for all candidates filing nomination papers in that office.

(a) Within a county the county clerk shall arrange the names of all candidates filing nomination papers with the clerk’s office using the same method as that used by the board under s. 5.60 (1) (b).

(b) The county board of election commissioners in counties having a population of more than 500,000 shall prepare the official primary ballot. The commissioners shall arrange the names of all candidates for each office whose nomination papers are filed at the county level, using the same method as that used by the government accountability board under s. 5.60 (1) (b).

5.65 Statewide primary. At the primary election, an elector may vote for the candidates of only one party, or the elector may vote for any of the independent candidates for state office listed, but the elector may not vote for more than one candidate for a single office. A space shall be provided on the ballot for an elector to write in the name of his or her choice as a party candidate for any office, including a party candidate of a party whose name appears on the ballot, column or row designated for independent candidates, as provided in sub. (1) (b) or (2) (b), but no space shall be provided to write in the names of independent candidates.

5.655 Separate primary ballots. At the primary election, an elector may vote for the candidates of only one party, or the elector may vote for any of the independent candidates for state office listed, but the elector may not vote for more than one candidate for a single office. A space shall be provided on the ballot for an elector to write in the name of his or her choice as a party candidate for any office, including a party candidate of a party whose name appears on the ballot, column or row designated for independent candidates, as provided in sub. (1) (b) or (2) (b), but no space shall be provided to write in the names of independent candidates.

Text from the 2005–06 Wis. Stats. database updated by the Legislative Reference Bureau. Only printed statutes are certified under s. 35.18 (2), stats. Statutory changes effective prior to 10–2–08 are printed as if currently in effect. Statutory changes effective on or after 10–2–08 are designated by NOTES. Report errors at (608) 266–3561, FAX 264–6948, http://www.legis.state.wi.us/rsb/stats.html
based on the number of votes received by each party’s candidate for president or governor at the last general election beginning with the party that received the most votes. To the right of the columns for parties qualifying under s. 5.62 (1) (b) shall be placed the columns for parties qualifying under s. 5.62 (2) in the same order in which the parties filed petitions with the board. Any column required under par. (e) 2. shall be placed next in order. To the right of the party columns shall be a column for the names of independent candidates for each office, or more than one column if the first column does not provide sufficient space for the names of all such candidates.

(d) The offices shall be arranged beginning with president and vice president or governor and lieutenant governor, whenever these offices are filled, and then the remaining offices in the order designated under s. 5.62 (3).

(e) 1. Except as provided in subd. 2., each candidate’s name shall be placed in the column of the party by which nominated or if independent, in a column designated independent and all candidates for the same office shall appear within the same rows on the ballot. If a separate column is provided to write in the names of any party candidates under subd. 2., the column shall appear before the column designated independent with the spaces provided to write in the names of the candidates for each such party appearing in the same order in which the columns of their parties would appear under par. (b). Along with the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers. Independent candidates for the same county office shall be listed in the same manner in an order drawn by lot or by supervision of the county clerk or board of election commissioners. The board shall conduct a redrawing for purposes of determining the arrangement of independent candidates for state office who appeared on the primary ballot in the manner provided in s. 5.60 (1) (b).

2. There shall be a separate column for the candidates of each party qualifying for that column under s. 5.62 (1) (b) or (e), except that if, within any assembly district or county, there are no candidates for any national, state or county office representing such a party who qualify to have their names appear on the ballot under the name of that party within that assembly district, the county clerk or board of election commissioners shall provide a combined separate column that will permit an elector to cast a vote for a write-in candidate of any such party for each national, state or county office whenever that party qualifies to be represented in a separate column but does not qualify under this subdivision. The ballot shall include the name of each candidate qualifying for a separate column under each office, with the names of the candidates for each such party appearing in the same order in which the columns of the parties would appear under par. (b).

(eg) In the case of ballotking for the offices of president and vice president, the names of the candidates shall be placed in the column of the party that nominated them or if independent, in a column designated independent. In each column there shall be one choice for the elector to cast a ballot jointly for both offices.

(em) The names of the candidates for the offices of president and vice president certified under s. 8.16 (7) or filed under s. 8.20 shall appear on the ballot in the form prescribed in s. 7.08 (2) (a). The presidential candidates shall be distributed on the ballot in the order designated under ss. 8.18 (2) and 8.20 (2) (d) are not listed on the ballot but for the candidates for president and vice president is a vote for them through their named presidential electors.

(es) The party candidates shall be arranged consecutively from top to bottom based on the number of votes received by their party’s candidate for governor at the last election beginning with the party that received the most votes. The independent president—vice president candidates shall be listed together in an order drawn by lot by or under supervision of the board, following under the party candidates. Along with the names of the independent candidates shall appear the party or principle of the candidates, if any, in 5 words or less, as shown on their nomination papers. Following under the independent candidates, a space shall be left for writing in the names of a candidate for president and vice president.

(f) In the case of ballotking for the office of governor and lieutenant governor, the names of the candidates shall be placed in the party column by which nominated or if independent, in a column designated independent. In each column there shall be one choice for the elector to cast a ballot jointly for both offices.

(g) Following under the independent candidates for each office, a space shall be provided for the elector to write in the name of a candidate of his or her choice for that office.

(2) REFERENDUM BALLOT. (am) There shall be a separate ballot when any proposed constitutional amendment or any other measure or question is submitted to a vote of the people, except when authorized in s. 5.65. The ballot shall give a concise statement of each question in accordance with the act or resolution directing submission in the same form as prescribed by the board under s. 7.08 (1) (a). The question may not be worded in such a manner as to require a negative vote to approve a proposition or an affirmative vote to disapprove a proposition. Unless otherwise expressly provided, this ballot form shall be used at all elections when questions are submitted to a vote of the people.

(c) The official referendum ballot prescribed under this subsection shall be utilized at every election, except that the format shall be altered to the extent provided or required by other laws establishing or authorizing referenda to be conducted. Except as authorized in s. 5.655, all referenda shall appear on a separate ballot, but more than one referendum question may appear on the same referendum ballot whenever the questions are numbered and all electors voting the ballot are entitled to vote upon all questions appearing thereon. When more than one state referendum is placed on the same ballot, the board shall number the questions in chronological sequence. If the legislature submits questions on different dates, the board shall number the questions sequentially based on the date on which the questions are submitted by the legislature. Except as authorized in s. 5.655, state and county referenda shall appear on a separate ballot from municipal or special district referenda. The form of all referendum ballots shall substantially be the same as that prescribed by the board under s. 7.08 (1) (a).


5.65 Special referendum ballots. Unless otherwise provided, ballots for special referenda shall conform to the format prescribed under s. 5.64 (2), insofar as applicable.

History: 1983 a. 484; 1999 a. 182.

5.655 Consolidated ballots. (1) Whenever a separate ballot is required to be used, a municipality may use a single ballot to facilitate the use of voting machines or an electronic voting system or, if the municipality employs paper ballots, may use a consolidated paper ballot that is authorized under sub. (2). If a municipality uses a single ballot in lieu of separate ballots, the ballot shall include a separate column or row for any office, referendum or party for which a separate ballot is required by law and the ballot shall give a concise statement of each question in accordance with the act or resolution directing submission in the same form as prescribed by the board under s. 7.08 (2) (a). The names of the candidates for each such party appearing in the same order in which the columns of the parties would appear under par. (g).

(2) Whenever a municipality employing paper ballots is required to utilize separate ballots for certain offices, referenda or parties at an election, the municipality may, with the approval of the county clerk or board of election commissioners of each county in which there is located any portion of the municipality where one or more electors reside, substitute a single consolidated paper ballot or a ballot that is designed to be utilized with an electronic voting system, if the ballot contains all of the applicable information required to be provided for paper ballots at that election.
5.68 Cost of elections. (1) The cost of acquisition of ballot boxes and voting booths, voting machines or electronic voting systems and regular maintenance thereof shall be borne by the municipalities in which the boxes, booths, machines or systems are used.

(2) Except as otherwise expressly provided, all costs for ballots, supplies, notices and other materials necessary in preparing or conducting any election shall be paid for by the county or municipality whose clerk or board of election commissioners is responsible for providing them. If a ballot is prepared for a school district under sub. (2), the school district under sub. (2) shall be paid for by the county or district, except as provided in s. 7.03.

(3) Whenever an affidavit is filed by the board or any elector alleging an error or omission in the preparation of a ballot, the circuit court for the county where the ballot is proposed to be used or its presiding judge, by order, may summarily require a county or municipal clerk to correct the error, or show cause why it should not be corrected and, by order, the hearing, have the correction made.

History: 1979 c. 260; 1979 c. 335 ss. 9, 10; Stats. 1979 s. 5.72; 1981 c. 377; 1983 a. 484.

5.72 Correcting ballot errors. (1) As soon as possible after ballots are delivered to the county clerk or to the municipal clerk if the municipality is preparing ballots under s. 7.15 (2), but not later than 3 weeks before any election relating to a state or national office or statewide referendum, the county or municipal clerk preparing the ballots shall submit one copy of each ballot to the board for review of possible errors. If the contractor preparing the ballots supplies proofs in advance of ballot preparation, the clerk shall submit one copy of the proofs in lieu of actual ballots. If a voting machine ballot or other ballot combining local candidates or referenda with state or national candidates or referenda is used, the entire ballot shall be submitted, but if ballots intended for distribution to electors are used, only those ballots relating to state or national offices and statewide referenda need be submitted. This subsection does not require delay of ballot distribution or mailing of absentee ballots.

(2) The board shall review ballots and proof copies submitted under sub. (1) and shall notify the county and municipal clerk of any notices that are returned to the board within no event later than 7 days after submission. The clerk is not required to correct a ballot error upon receipt of notice of the error, unless ordered to do so under sub. (3) or s. 5.06 (6).

(3) Whenever an affidavit is filed by the board or any elector alleging an error or omission in the preparation of a ballot, the circuit court for the county where the ballot is proposed to be used or its presiding judge, by order, may summarily require a county or municipal clerk to correct the error, or show cause why it should not be corrected and, by order, the hearing, have the correction made.
5.72 **ELECTIONS — GENERAL PROVISIONS; BALLOTS & VOTING**

**SUBCHAPTER III**

**ELECTRONIC VOTING SYSTEMS**

5.76 **Adoption, experimentation or discontinuance of systems.** 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 this subchapter and approved under s. 5.91 for use in this state, 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 in combination with mechanical voting machines, or in combination with paper ballots where such ballots are authorized to be used.

**History:** 1979 c. 311; 1985 a. 304.

**Cross Reference:** See also ch. GAB 7, Wis. adm. code.

5.77 **Applicable procedures.** (1) So far as applicable, the procedure provided for voting paper ballots applies when an electronic voting system employing the use of ballots distributed to electors is used.

(2) So far as applicable, the procedure provided for voting with mechanical voting machines applies when an electronic voting system employing the use of electronic voting machines is used.

**History:** 1979 c. 311.

5.78 **Voting booths.** At polling places where an electronic voting system employing the use of ballots distributed to electors is used, the municipality shall supply a sufficient number of voting booths for the use of electors as provided in s. 5.35 (2).

**History:** 1979 c. 311.

5.79 **Instruction of electors.** At polling places where an electronic voting system employing the use of ballots and voting devices is used, the election officials shall offer each elector instruction in the operation of the voting device and ballot before the elector enters the voting booth. No instructions may be given after the elector has entered the voting booth, except as authorized under s. 6.82 (2). All instructions shall be given by election officials in such a manner that they may be observed by other persons in the polling place.

**History:** 1979 c. 311; 2001 a. 16.

5.80 **Demonstrator electronic voting system.** When an electronic voting system is used in a forthcoming election, the municipal clerk may provide, for the purpose of instructing electors in the election, one or more demonstrator electronic voting systems using the names of fictitious candidates or fictitious questions for placement in any public building within the municipality in which the election occurs. If such placement of a demonstrator takes place it shall be made available at least 30 days before the election.

**History:** 1979 c. 311.

5.81 **Ballot information; arrangement; absentee ballots.** (1) Whenever the statutes provide for the use of separate ballots or columns or rows for offices, parties or referenda, and an electronic voting system in which ballots are distributed to electors is used at a polling place, a single ballot may be used for all offices, referenda and parties. The ballot information, whether placed on the ballot or on the voting device, shall, as far as practicable, be grouped and ordered in the same manner as provided for other ballots under this chapter, except that the information on the ballot need not be in separate columns or rows.

(2) If a municipality utilizes an electronic voting system in which ballots distributed to electors are employed, absentee ballots may consist of ballots utilized with the system or paper ballots and envelopes voted in person in the office of the municipal clerk or voted by mail.

**History:** 1979 c. 311; 2001 a. 16; 2005 a. 92.

5.82 **Write-in ballots.** If the ballot employed by a municipality does not provide a space for write-in votes, the municipality shall provide a separate write-in ballot, which may be in the form of a paper ballot, to permit electors to write in the names of persons whose names are not on the ballot whenever write-in votes are authorized.

**History:** 1979 c. 311; 1987 a. 391; 2001 a. 16.

5.83 **Preparation for use of voting devices; comparison of ballots.** Where voting devices are used at a polling place, the municipal clerk shall cause the voting devices to be put in order, set, adjusted and made ready for voting when delivered to the polling place. Before the opening of the polls the inspectors shall compare the ballots used in the voting devices with the sample ballots furnished and see that the names, numbers and letters thereon agree and shall certify thereto on forms provided by the board.

**History:** 1979 c. 311.

5.84 **Testing of equipment; requirements for programs and ballots.** (1) Where any municipality employs an electronic voting system which utilizes automatic tabulating equipment, either at the polling place or at a central counting location, the municipal clerk shall, on any day not more than 10 days prior to the election day on which the equipment is to be utilized, have the equipment tested to ascertain that it will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given by the clerk at least 48 hours prior to the test by publication of a class 1 notice under ch. 985 in one or more newspapers published within the municipality if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to the public. The test shall be conducted by processing a preaudited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each referendum. The test shall include for each office one or more ballots which have votes in excess of the number allowed by law and, for a partisan primary election, one or more ballots which have votes cast for candidates of more than one recognized political party, in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the municipal clerk shall ascertain the cause and correct the error. The clerk shall make an errorless count before the automatic tabulating equipment is approved by the clerk for use in the election.

(2) Before beginning the ballot count at each polling place or at the central counting location, the election officials shall witness a test of the automatic tabulating equipment by engaging the printing mechanism and securing a printed result showing a zero count for every candidate and referendum. After the completion of the count, the ballots and programs used shall be sealed and retained under the custody of the municipal clerk in a secure location.

**History:** 1979 c. 311; 2001 a. 16; 2005 a. 92.

5.85 **Receiving, counting, tallying and return of ballots.** (1) At any polling place at which an electronic voting system is utilized, the following procedures for receiving, counting, tallying and return of the ballots shall be used. Whenever paper ballots are utilized at a polling place in combination with ballots employed in an electronic voting system, the paper ballots shall be deposited in a separate ballot box or boxes, according to the types of ballots used. For the purpose of transporting the ballots or the record of the votes cast, the municipal clerk shall provide...
a secure container for each polling place. At each polling place, the applicable portions of the procedure prescribed for initiating the election under ss. 7.51 (1) and (2) shall be performed, except that no count of the ballots, except write-in votes and paper ballots used for absentee voting and other purposes authorized by law, may be performed at a polling place if a central counting location is designated for the counting of ballots at that polling place by the municipality.

(2) (a) The election officials shall examine the ballots or record of votes cast for write-in votes and shall count and tabulate the write-in votes. When an electronic voting system is used in which ballots are distributed to electors, before separating the remaining ballots from their respective covering envelopes, the election officials shall examine the ballots for write-in votes. When an elector has cast a write-in vote, the election officials shall compare the write-in vote with the votes on the ballot to determine whether the write-in vote results in an overvote for any office. In case of an overvote for any office, the election officials shall make a true duplicate ballot of all votes on the ballot except for the office that is overvoted, by using an official ballot of that kind used by the elector who voted the original ballot, and one of the marking devices so as to transfer all votes of the elector except for the office overvoted, to an official ballot of that kind used in the election. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, the election officials shall consist in each case of at least one election official of each of the 2 major political parties, whenever officials of both parties are present.

(b) Write-in votes shall be counted as provided in s. 7.50 (2) (d). The original ballot upon which there is an overvote shall be clearly labeled “Overvoted Ballot” and the duplicate ballot produced under par. (a) shall be clearly labeled “Duplicate Overvoted Ballot.” The election officials shall place the same serial number on each “Overvoted Ballot” and its corresponding “Duplicate Overvoted Ballot,” commencing with number “1” and continuing consecutively for each of the ballots for which a “Duplicate Overvoted Ballot” is produced in that ward or election district. The election officials shall initial the “Duplicate Overvoted Ballot” ballots and shall place them in the container for return of the ballots. The “Overvoted Ballot” ballots and their envelopes shall be placed in the “Original Ballots” envelope.

(c) Ballots bearing write-in votes marked in the place designated for write-in votes, bearing the initials of an election official, not resulting in an overvote, and otherwise complying with the election laws as to marking shall be counted, tallied, and their votes recorded on a tally sheet provided by the municipal clerk. Ballots and ballot envelopes shall be separated and all ballots except any that are defective or overvoted shall be placed separately in the container for return of the ballots, along with the ballots marked “Duplicate Overvoted Ballots.”

(3) The election officials shall examine the ballots to determine if any is damaged or defective so that it cannot be counted by the automatic tabulating equipment. If any ballot is damaged or defective so that it cannot be properly counted by the automatic tabulating equipment, the election officials, in the presence of witnesses, shall make a true duplicate ballot of all votes on that ballot by using one of the marking devices so as to transfer all votes of the elector to an official ballot of that kind used by the elector who voted the original ballot in that election. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, the election officials shall consist in each case of at least one election official of each of the 2 major political parties, whenever officials of both parties are present. The original ballot shall be clearly labeled “Damaged Ballot” and the ballot so produced “Duplicate Damaged Ballot,” and each shall bear the same number which shall be placed thereon by the election officials, commencing with number “1” and continuing consecutively for the ballots of that kind in the ward. The election officials shall initial the “Duplicate Damaged Ballot” ballots, and shall place them in the container for return of the ballots. The officials shall place “Damaged Ballot” ballots and their envelopes in the “Original Ballots” envelope.

(4) The original ballots shall be preserved with the duplicate ballots and delivered by the inspectors to the municipal clerk. The officials shall then make out a slip indicating the number of electors voting in person, number of absentee ballots cast in the ballot box, and the total number of electors of each ward served by the polling place who voted at the election, which shall be signed by all the inspectors.

(5) If the municipality has designated a central counting location to be used to count ballots under s. 7.51 (1), the inspectors shall count and deposit the paper ballots in the container. The inspectors shall then place the slip made out under sub. (4) in the container. The inspectors shall also place the tally sheet recording the write-in votes and official ballots on paper ballots only. The other ballots, or the record of the votes cast on an electronic voting system where no ballots are distributed to electors, in the container and thereupon immediately seal the container with an adhesive seal provided by the municipal clerk for the purpose in such manner that the seal completely covers the opening in the container, and each of the inspectors shall sign the seal. The “Defective Ballots” envelope, and “Original Ballots” envelope each shall be securely sealed and the flap or end thereof of each signed by the inspectors and returned to the central counting location designated by the box for return of the ballots, enclosed ballots and returns. Thereupon, the municipal clerk or 2 of the election officials shall forthwith and by the most direct route transport the container and envelopes to the central counting location designated by the municipal clerk. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, the election officials shall consist in each case of at least one election official of each of the 2 major political parties, whenever officials of both parties are present.


5.86 Proceedings at central counting locations.

(1) All proceedings at each central counting location shall be under the direction of the municipal clerk or an election official designated by the clerk unless the central counting location is at the county seat and the municipal clerk delegates the responsibility to supervise the location to the county clerk, in which case the proceedings shall be under the direction of the county clerk or an election official designated by the county clerk. Unless election officials are selected under s. 7.30 (4) (c) without regard to party affiliation, the employees at each central counting location, other than any specially trained technicians who are required for the operation of the automatic tabulating equipment, shall be equally divided between members of the 2 major political parties under s. 7.30 (2) (a) and all duties performed by the employees shall be performed consisting of an equal number of members of each political party whenever sufficient persons from each party are available.

(2) At each central counting location, a team of election officials designated by the clerk or election official having charge of the location under sub. (1) shall check the container returned containing the ballots to determine that all seals are intact, and thereupon shall open the container, check the inspectors’ slip and compare the number of ballots so delivered against the total number of electors of each ward served by the polling place who voted, remove the ballots or record of the votes cast and deliver them to the technicians operating the automatic tabulating equipment. Any discrepancies between the number of ballots and total number of electors shall be noted on a sheet furnished for that purpose and signed by the election officials.


5.87 Tabulating votes.

(1) If a central counting location is not utilized, the procedure for tabulating the votes by the automatic tabulating equipment shall be under the direction of the chief inspector and shall conform to the requirements of the automatic tabulating equipment. If any ballot is not accepted by the
5.87 **ELECTIONS — GENERAL PROVISIONS; VOTING**

If automatic tabulating equipment, the election officials shall make a duplicate ballot to replace that ballot in the manner prescribed in s. 5.85 (3). All proceedings at the polling place and at any central counting location shall be open to the public, but no person, except those employed and authorized for the purpose, may touch any ballot, container, envelope, return or equipment.

(2) The board shall, by rule, prescribe uniform standards for determining the validity of votes cast or attempted to be cast with each electronic voting system approved for use in this state under s. 5.91. The rules shall apply only to situations that may arise in which the validity of a vote or attempted vote cast by an elector utilizing a particular system cannot be determined under s. 7.50.

**History:** 1979 c. 311; 1983 a. 484; 2003 a. 265.

5.89 **Official return.** The return produced by the automatic tabulating equipment shall be appended to the tally sheet by the canvassers. The return constitutes a part of the official return for the ward or election district. The municipal clerk shall check the totals shown by the return and, if it appears that there is an obvious discrepancy with respect to the number of votes cast in any ward or election district, the clerk shall have the ballots for that ward or election district publicly retabulated to correct the return. Upon completion of the count, the return is open to the public.

**History:** 1979 c. 311.

5.90 **Recounts.**

(1) Except as otherwise provided in this subchapter, recounts of votes cast on an electronic voting system shall be conducted in the manner prescribed in s. 9.01. Except as provided in sub. (2) and s. 9.01 (1) (b) 8s., if the ballots are distributed to the electors, the board of canvassers shall recount the ballots with automatic tabulating equipment. The board of canvassers shall test the automatic tabulating equipment to be used prior to the recount as provided in s. 5.84, and then the official ballots or the record of the votes cast shall be recounted on the automatic tabulating equipment. In addition, the board of canvassers shall check the ballots for the presence or absence of the initials and other distinguishing marks, shall examine the ballots marked “Rejected”, “Defective” and “Objected to” to determine the propriety of such labels, and shall compare the “Duplicate Overvoted Ballots” and “Duplicate Damaged Ballots” with their respective originals to determine the correctness of the duplicates. If electronic voting machines are used, the board of canvassers shall perform the recount using the permanent paper record of the votes cast by each elector, as generated by the machines.

(2) Any candidate, or any elector when for a referendum, may, by the close of business on the next business day after the last day for filing a petition for a recount under s. 9.01, petition the circuit court for an order requiring ballots under sub. (1) to be counted by hand or by another method approved by the court. The petitioner in such an action bears the burden of establishing by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election.

(3) A court with whom a petition under sub. (2) is filed shall hear the matter as expeditiously as possible, without a jury. The court may order a recount of the ballots by hand or another method only if it determines that the petitioner has established by clear and convincing evidence that due to an irregularity, defect, or mistake committed during the voting or canvassing process the results of a recount using automatic tabulating equipment will produce incorrect recount results and that there is a substantial probability that recounting the ballots by hand or another method will produce a more correct result and change the outcome of the election.

**History:** 1979 c. 311; 1987 a. 391; 2005 a. 92, 451; 2007 a. 96.

5.905 **Software components.**

(1) In this section, “software component” includes vote-counting source code, table structures, modules, program narratives and other human-readable computer instructions used to count votes with an electronic voting system.

(2) The board shall determine which software components of an electronic voting system it considers to be necessary to enable review and verification of the accuracy of the automatic tabulating equipment used to record and tally the votes cast with the system.

**History:** 2005 a. 92.

5.91 **Requisites for approval of ballots, devices and equipment.**

No ballot, voting device, automatic tabulating equipment or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the board. The board may revoke its approval of any ballot, voting device, equipment or materials at any time for cause. No such ballot, voting device, automatic tabulating equipment or related equipment or material may be approved unless it fulfills the following requirements:

(1) It enables an elector to vote in secrecy and to select the party or the independent candidates for whom an elector will vote in secrecy at a partisan primary election.

(2) Except at a primary election, it enables an elector to vote a straight party ticket, but the automatic tabulating equipment counts the vote of an elector who casts a vote for a candidate for an office outside the straight party ticket for that office only.

(3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from indepen-
dent candidates and in part of candidates whose names are written
in by the elector.

(4) It enables an elector to vote for a ticket of his or her own
selection for any person for any office for whom he or she may
desire to vote whenever write−in votes are permitted.

(5) It accommodates all referenda to be submitted to the elec-
tors in the form provided by law.

(6) The voting device or machine permits an elector in a pri-
mary election to vote for the candidates of the recognized political
party or the independent candidates of his or her choice, and the
automatic tabulating equipment or machine rejects any ballot on
which votes are cast in the primary of more than one recognized
political party, except where a party or independent candidate des-
ignation is made or where an elector casts write−in votes for candi-
dates of more than one party on a ballot that is distributed to the
Elector.

(7) It permits an elector to vote at an election for all persons
and offices for whom and for which the elector is lawfully entitled
to vote; to vote for as many persons for an office as the elector is
entitled to vote for; to vote for or against any question upon which
the elector is entitled to vote; and it rejects all choices recorded on
a ballot for an office or a measure if the number of choices exceeds
the number which an elector is entitled to vote for on such office
or on such measure, except where an elector casts excess write−in
votes upon a ballot that is distributed to the elector.

(8) It permits an elector, at a presidential or gubernatorial elec-
tion, by one action to vote for the candidates of a party for presi-
dent and vice president or for governor and lieutenant governor,
respectively.

(9) It prevents an elector from voting for the same person
more than once for the same office, except where an elector casts
excess write−in votes upon a ballot that is distributed to the elec-
tor.

(10) It is suitably designed for the purpose used, of durable
construction, and is usable safely, securely, efficiently and accu-
trade in the conduct of elections and counting of ballots.

(11) It records correctly and counts accurately every vote
properly cast and maintains a cumulative tally of the total votes
that is retrievable in the event of a power outage, evacuation
or malfunction so that the records of votes cast prior to the time
that the problem occurs is preserved.

(12) It minimizes the possibility of disenfranchisement of
electors as the result of failure to understand the method of opera-
tion or utilization or malfunction of the ballot, voting device, au-
tomatic tabulating equipment or related equipment or materials.

(13) The automatic tabulating equipment authorized for use in
connection with the system includes a mechanism which makes
the operator aware of whether the equipment is malfunctioning in
such a way that an inaccurate tabulation of the votes could be
obtained.

(14) It does not employ any mechanism by which a ballot is
punched or punctured to record the votes cast by an elector.

(15) It permits an elector to privately verify the votes selected
by the elector before casting his or her ballot.

(16) It provides an elector with the opportunity to change his
or her votes and to correct any error or to obtain a replacement for
a spoiled ballot prior to casting his or her ballot.

(17) Unless the ballot is counted at a central counting location,
it includes a mechanism for notifying an elector who attempts to
cast an excess number of votes for a single office that his or her
votes for that office will not be counted, and provides the elector
with an opportunity to correct his or her ballot or to receive and
cast a replacement ballot.

(18) If the device consists of an electronic voting machine, it
generates a complete, permanent paper record showing all votes
cast by each elector, that is verifiable by the elector, by either
visual or nonvisual means as appropriate, before the elector leaves
the voting area, and that enables a manual count or recount of each
vote cast by the elector.

92.

Cross Reference: See also ch. GAB 7, Wis. adm. code.

5.92 Bond may be required. Before entering into a contract
for the purchase or lease of an electronic voting system or any bal-
lots, voting devices, automatic tabulating equipment or related
equipment or materials to be used in connection with a system,
any municipality may require the vendor or lessor to provide a per-
formance bond with a licensed surety company as surety, guaran-
teeing the supply of additional equipment, parts or materials, pro-
vision of adequate computer programming, preventive
maintenance or emergency repair services, training of election
officials and other municipal employees or provision of public
educational materials for a specified period, or guaranteeing the
security of the computer programs or other equipment or materials
to be utilized with the system to prevent election fraud, or such
other guarantees as the municipality determines to be appropriate.

History: 1979 c. 311.

Cross Reference: See also ch. GAB 7, Wis. adm. code.

5.93 Administration. The board may promulgate reasonable
rules for the administration of this subchapter.

History: 1979 c. 311; 1985 a. 332 s. 251 (1).

Cross Reference: See also ch. GAB 7, Wis. adm. code.

5.94 Sample ballots; publication. When an electronic vot-
ing system employing a ballot that is distributed to electors is
used, the county and municipal clerk of the county and municip-
ality in which the polling place designated for use of the system
is located shall cause to be published, in the type B notices, a true
actual−size copy of the ballot containing the names of offices and
candidates and statements of measures to be voted on, as nearly
as possible, in the form in which they will appear on the official
ballot on election day. The notice may be published as a newspa-
ner insert. Municipal clerks may post the notice if the remainder
of the type B notice is posted.

History: 1979 c. 311; 2001 a. 16.

5.95 Elector information. The board shall prescribe informa-
tion to electors in municipalities and counties using various
types of electronic voting systems to be published in lieu of the
information specified in s. 10.02 (3) in type B notices whenever
the type B notice information is inappropriate.

History: 1979 c. 311.