



State of Wisconsin
2021 - 2022 LEGISLATURE

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2021 ASSEMBLY BILL 304

May 3, 2021 - Introduced by Representative MAGNAFICI, cosponsored by Senator BERNIER. Referred to Committee on Campaigns and Elections.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to repeal* 5.06 (10); *to renumber and amend* 5.06 (1); *to amend* 5.06
2 (4), 5.06 (7), 5.15 (4) (a), 5.60 (3) (ag), 5.62 (1) (a), 5.94, 6.45 (1), 6.46 (2), 6.47 (1)
3 (ag), 6.47 (1) (dm), 7.08 (10), 7.23 (1) (e), 7.50 (2) (em), 7.52 (1) (b), 7.60 (5) (a),
4 9.01 (2), 10.01 (1), 10.06 (2) (d), 10.06 (2) (f), 10.06 (2) (j), 10.06 (2) (L), 10.06 (3)
5 (as), 10.06 (3) (b), 10.06 (3) (c) and 10.06 (3) (d); and *to create* 5.06 (1) (b) and
6 9.10 (2) (e) 9. of the statutes; **relating to:** elections administration, recall
7 petitions, and recount procedures.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the state's election laws, including the following:

1. Temporary orders related to the conduct of elections.

Under current law, the Elections Commission is authorized to review the conduct of election officials for violations of law and abuse of discretion. Current law provides that the commission may, after investigation, issue an order requiring an election official to conform his or her conduct to the law, restraining an election official from taking an action inconsistent with the law, or requiring an election official to correct an action or decision inconsistent with the law.

The bill authorizes the commission to issue such other temporary orders of limited effect as it deems necessary to carry out its powers and duties in reviewing the conduct of election officials.

ASSEMBLY BILL 304***2. Review of the conduct of recounts.***

Under current law, only courts are authorized to review matters concerning recounts. The bill does not affect that authority but additionally authorizes the commission to review the decision or other conduct of an election official with respect to matters concerning a recount in order to determine whether the official's decision or other conduct is contrary to law or constitutes an abuse of discretion. That authority mirrors the commission's authority with respect to other matters arising in the course of elections. Under the bill, the commission may not review a final recount determination that is ripe for appeal in court.

3. Delivery of recount petitions to candidates.

The bill alters the methods of delivery of a recount petition to candidates in an election. Under current law, a petition for a recount for an elected office must be filed with the clerk or body with whom nomination papers are filed for that office. The clerk or body is required to deliver the petition to each opposing candidate or the candidate's designated agent. The candidate or agent must acknowledge personal delivery of the petition by signing a receipt. If a candidate or agent does not personally accept delivery of the petition, the clerk or body must promptly deliver the copies of the petition to the sheriff, who must then deliver the copies of the petition to each candidate at the address given on the candidate's nomination papers in the manner provided for service of a summons in civil actions.

The bill adds the following steps to this process:

a. If a candidate or agent does not personally accept delivery of the petition, the clerk or body is required to attempt to notify the candidate or agent of the petition by e-mail and by telephone and, upon receiving acknowledgment from the candidate or agent, retain documentation of that notice.

b. If the clerk or body does not receive acknowledgment by e-mail or by telephone, the clerk or body must deliver copies of the petition to the sheriff for service as described above. However, if the sheriff does not serve a copy of the petition within 24 hours, the clerk or body must publish or post notice of the petition, which must occur at least 24 hours before the start of the recount.

4. Information concerning domestic abuse and sexual assault victim service providers.

Under current law, the commission is required to provide information on a continuing basis to all municipal clerks concerning the names and addresses of domestic abuse and sexual assault victim service providers. Under the bill, the commission is required to provide that information only as needed to verify the voting eligibility of a voter whose identity must be kept confidential because the voter is the victim of domestic abuse, sexual assault, or stalking.

5. Legible printing of signers' names on a recall petition.

Under the bill, an individual's signature on a recall petition may not be counted unless, among the other requirements provided under current law, the signer legibly prints his or her name in a space provided next to his or her signature.

ASSEMBLY BILL 304***6. Notice of referendums on the ballot at spring and partisan primaries.***

The bill requires county clerks to publish a type A notice of a referendum prior to a partisan primary or spring primary if a referendum will appear on the ballot at the spring or partisan primary. Under current law, a type A notice of a referendum must contain the text of the ballot question and a statement specifying where a copy of the resolution directing submission of the question may be obtained.

The bill also requires municipal clerks to publish certain notices, required under current law for spring and general elections, prior to a partisan primary or spring primary when a referendum will appear on the ballot at the spring or partisan primary.

7. Delivery to the commission of certified statements regarding an election.

Under current law, each county clerk is required to deliver or transmit to the commission a certified copy of each statement of a county board of canvassers regarding an election within certain specified time periods after primaries and all other elections. The bill specifies that the certified copies must be delivered or transmitted to the commission in a manner prescribed by the commission.

8. Appointment of election inspectors for canvassing absentee ballots.

Current law allows a municipality to appoint additional election inspectors for the canvassing of absentee ballots by the municipal board of absentee ballot canvassers. Under current law, an inspector so appointed must be a qualified elector of the municipality. The bill provides that if the municipality cannot identify a sufficient number of qualified electors of the municipality to serve as inspectors, the municipality may appoint qualified electors of the county in which the municipality is located to serve as inspectors.

9. Ballot space for write-in candidates for city office.

Current law requires that spring election ballots for town, village, and school district offices include sufficient space for write-in candidates. The bill requires that spring election ballots for city offices also include sufficient space for write-in candidates.

10. Names of independent candidates for state office listed on the partisan primary ballot.

The bill eliminates the requirement that a partisan primary ballot list the names of independent candidates for state office. Prior to July 1, 2011, listing the names of independent candidates for state office on the partisan primary ballot was necessary for determining eligibility for providing public financing for such candidates. Current law no longer provides public financing for campaigns for state office.

11. Maintaining poll lists after an election.

Under current law, a poll list created for an election must be maintained for 22 months after the election. The bill provides that an original electronic poll list need not be maintained if a true copy is maintained for the 22-month period.

ASSEMBLY BILL 304**12. Notice of ballot form and contents when an electronic voting system is used for an election.**

Under current law, when a municipality uses an electronic voting system for an election, the clerks of the county and municipality where the system is used must provide notice of the ballot form and contents by arranging for the publication of an actual-size copy of the ballot. Current law, however, allows a publisher to reduce the size of the facsimile ballot for publication purposes. The bill eliminates the inconsistency between these two provisions by eliminating the requirement that the clerks arrange for publication of an actual-size copy of the ballot.

13. Paper copies of registration lists used in an election.

The bill specifies that a municipal clerk need not make paper copies of a registration list for use in an election if an electronic registration list is used.

14. References to copying machines.

Under current law, a municipal clerk is required upon request to provide a candidate one copy of the current poll list for those areas for which he or she is a candidate. Current law specifies that if a copying machine is unavailable, the clerk is required to remove the lists from the office to make copies and return the lists immediately thereafter. The bill removes any reference to a copying machine.

15. Counting of write-in votes.

Under current law, one of the circumstances under which all write-in votes must be counted for a particular office in an election occurs if a candidate certified to appear on the ballot dies or withdraws before the election. Under the bill, all write-in votes must be counted under that circumstance only if a candidate certified to appear on the ballot dies before the election.

16. Commission rules relating to forms of election notices.

Under current law, the commission is required to make rules and draft whatever forms it considers necessary to standardize the form of various election notices. The bill eliminates the requirement to make such rules but not the requirement to draft standardized forms.

17. Establishing ward lines.

The bill provides that, for the purpose of creating wards, no ward line may cross the boundary of a congressional, assembly, or supervisory district.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 5.06 (1) of the statutes is renumbered 5.06 (1) (a) and amended to
2 read:

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1 5.06 (1) (a) Whenever any elector of a jurisdiction or district served by an
2 election official person authorized under par. (b) to file a complaint believes that a
3 decision or action of the an election official or the failure of the official to act with
4 respect to any matter concerning nominations, qualifications of candidates, voting
5 qualifications, including residence, ward division and numbering, recall, ballot
6 preparation, election administration ~~or~~, conduct of elections, or, subject to par. (b) 2.,
7 conduct of a recount, is contrary to law, or the official has abused the discretion vested
8 in him or her by law with respect to any such matter, the ~~elector~~ authorized person
9 may file a written sworn complaint with the commission requesting that the official
10 be required to conform his or her conduct to the law, be restrained from taking any
11 action inconsistent with the law, or be required to correct any action or decision
12 inconsistent with the law or any abuse of the discretion vested in him or her by law.
13 The complaint shall set forth such facts as are within the knowledge of the
14 complainant to show probable cause to believe that a violation of law or abuse of
15 discretion has occurred or will occur. The complaint may be accompanied by relevant
16 supporting documents. The commission may conduct a hearing on the matter in the
17 manner prescribed for treatment of contested cases under ch. 227 if it believes such
18 action to be appropriate.

19 **SECTION 2.** 5.06 (1) (b) of the statutes is created to read:

20 5.06 (1) (b) The following persons are authorized to file a complaint under this
21 subsection:

22 1. An elector of a jurisdiction or district served by an election official who is a
23 subject of the complaint.

24 2. A candidate voted for at an election who is an aggrieved party, as determined
25 under s. 9.01 (1) (a) 5., or an elector who voted upon a referendum question at an

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1 election, with respect to a recount under s. 9.01, except that a recount determination
2 that is ripe for appeal under s. 9.01 (6) is not reviewable under this subsection.

3 **SECTION 3.** 5.06 (4) of the statutes is amended to read:

4 5.06 (4) The commission may, on its own motion, investigate and determine
5 whether any election official, with respect to any matter ~~concerning nominations,~~
6 ~~qualifications of candidates, voting qualifications, including residence, ward~~
7 ~~division and numbering, recall, ballot preparation, election administration or~~
8 ~~conduct of elections~~ specified in sub. (1), has failed to comply with the law or abused
9 the discretion vested in him or her by law or proposes to do so.

10 **SECTION 4.** 5.06 (7) of the statutes is amended to read:

11 5.06 (7) The commission may withdraw, modify, or correct an order issued
12 under sub. (6) within a timely period if it finds such action to be appropriate. The
13 commission may issue such other temporary orders of limited effect as it deems
14 necessary to carry out its powers and duties under this section.

15 **SECTION 5.** 5.06 (10) of the statutes is repealed.

16 **SECTION 6.** 5.15 (4) (a) of the statutes is amended to read:

17 5.15 (4) (a) Except as provided in par. (c), the division ordinance or resolution
18 shall number all wards in the municipality with unique whole numbers in
19 consecutive order, beginning with the number one, shall designate the polling place
20 for each ward, and shall describe the boundaries of each ward consistent with the
21 conventions set forth in s. 4.003. No ward line may cross the boundary of a
22 congressional, assembly, or supervisory district. The ordinance or resolution shall
23 be accompanied by a list of the block numbers used by the U.S. bureau of the census
24 that are wholly or partly contained within each ward, with any block numbers partly
25 contained within a ward identified, and a map of the municipality which illustrates

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1 the revised ward boundaries. If the legislature, in an act redistricting legislative
2 districts under article IV, section 3, of the constitution, or in redistricting
3 congressional districts, establishes a district boundary within a municipality that
4 does not coincide with the boundary of a ward established under the ordinance or
5 resolution of the municipality, the municipal governing body shall, no later than
6 April 10 of the 2nd year following the year of the federal decennial census on which
7 the act is based, amend the ordinance or resolution to the extent required to effect
8 the act. The amended ordinance or resolution shall designate the polling place for
9 any ward that is created to effect the legislative act. Nothing in this paragraph shall
10 be construed to compel a county or city to alter or redraw supervisory or aldermanic
11 districts.

12 **SECTION 7.** 5.60 (3) (ag) of the statutes is amended to read:

13 5.60 (3) (ag) Except as authorized in s. 5.655, there shall be a separate ballot
14 giving the names of all candidates for city offices, printed in the same form as
15 prescribed by the commission under s. 7.08 (1) (a). Sufficient space shall be provided
16 on the ballot for write-in candidates. City election ballots may vary in form to
17 conform to the law under which an election is held.

18 **SECTION 8.** 5.62 (1) (a) of the statutes is amended to read:

19 5.62 (1) (a) At the partisan primary, the following ballot shall be provided for
20 the nomination of candidates of recognized political parties for national, state, and
21 county offices ~~and independent candidates for state office~~ in each ward, in the same
22 form as prescribed by the commission under s. 7.08 (1) (a), except as authorized in
23 s. 5.655. The ballots shall be made up of the several party tickets with each party
24 entitled to participate in the primary under par. (b) or sub. (2) having its own ballot,
25 except as authorized in s. 5.655. The ballots shall be secured together at the bottom.

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1 The party ballot of the party receiving the most votes for president or governor at the
2 last general election shall be on top with the other parties arranged in descending
3 order based on their vote for president or governor at the last general election. The
4 ballots of parties qualifying under sub. (2) shall be placed after the parties qualifying
5 under par. (b), in the same order in which the parties filed petitions with the
6 commission. Any ballot required under par. (b) 2. shall be placed next in order. At
7 polling places where voting machines are used, each party shall be represented in
8 one or more separate columns or rows on the ballot. At polling places where an
9 electronic voting system is used other than an electronic voting machine, each party
10 may be represented in separate columns or rows on the ballot.

11 **SECTION 9.** 5.94 of the statutes is amended to read:

12 **5.94 Sample ballots; publication.** When an electronic voting system
13 employing a ballot that is distributed to electors is used, the county and municipal
14 clerk of the county and municipality in which the polling place designated for use of
15 the system is located shall cause to be published, in the type B notices, a true
16 ~~actual-size~~ copy of the ballot containing the names of offices and candidates and
17 statements of measures to be voted on, as nearly as possible, in the form in which they
18 will appear on the official ballot on election day. The notice may be published as a
19 newspaper insert. Municipal clerks may post the notice if the remainder of the type
20 B notice is posted.

21 **SECTION 10.** 6.45 (1) of the statutes is amended to read:

22 6.45 (1) After the deadline for revision of the registration list, the municipal
23 clerk shall make copies of the list for election use. Paper copies need not be made if
24 an electronic registration list is used.

25 **SECTION 11.** 6.46 (2) of the statutes is amended to read:

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1 6.46 (2) Poll lists shall be open to public inspection, except as provided in s.
2 6.47. The municipal clerk shall furnish upon request to each candidate who has filed
3 nomination papers for an office ~~which~~ that represents at least part of the
4 municipality one copy of the current poll list for those areas for which he or she is a
5 candidate for a fee not to exceed the cost of reproduction. ~~If a copying machine is not~~
6 ~~accessible,~~ the clerk shall must remove the lists from the office for the purposes of
7 copying, ~~and~~ the clerk shall return them immediately thereafter. The clerk shall
8 exclude information that is confidential under s. 6.47 (2) from copies of the list, except
9 as authorized under s. 6.47 (8).

10 **SECTION 12.** 6.47 (1) (ag) of the statutes is amended to read:

11 6.47 (1) (ag) “Domestic abuse victim service provider” means an organization
12 that is certified by the department of children and families as eligible to receive
13 grants under s. 49.165 (2) ~~and whose name is included on the list provided by the~~
14 ~~commission under s. 7.08 (10).~~

15 **SECTION 13.** 6.47 (1) (dm) of the statutes is amended to read:

16 6.47 (1) (dm) “Sexual assault victim service provider” means an organization
17 that is certified by the department of justice as eligible to receive grants under s.
18 165.93 (2) ~~and whose name is included on the list provided by the commission under~~
19 ~~s. 7.08 (10).~~

20 **SECTION 14.** 7.08 (10) of the statutes is amended to read:

21 7.08 (10) DOMESTIC ABUSE AND SEXUAL ASSAULT VICTIM SERVICE PROVIDERS.
22 Provide to each municipal clerk, ~~on a continuous basis~~ as needed to confirm the
23 eligibility to vote of electors who have obtained a confidential listing under s. 6.47 (2),
24 the names and addresses of organizations that are certified under s. 49.165 (4) (a)
25 or 165.93 (4) (a) to provide services to victims of domestic abuse or sexual assault.

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1 **SECTION 15.** 7.23 (1) (e) of the statutes is amended to read:

2 7.23 (1) (e) Poll lists created for any election may be destroyed 22 months after
3 the election at which they were created. An original electronic poll list need not be
4 maintained under this paragraph if a true copy of the electronic poll list is
5 maintained whether in hard copy or electronic format.

6 **SECTION 16.** 7.50 (2) (em) of the statutes is amended to read:

7 7.50 (2) (em) Except as otherwise provided in this paragraph, write-in votes
8 shall only be counted if no candidates have been certified to appear on the ballot. If
9 a candidate has been certified to appear on the ballot, write-in votes may only be
10 counted for a candidate that files a registration statement under s. 11.0202 (1) (a) no
11 later than noon on the Friday immediately preceding the election. If a candidate
12 certified to appear on the ballot dies ~~or withdraws~~ before the election, all write-in
13 votes shall be counted. When write-in votes are counted, every vote shall be counted
14 for the candidate for whom it was intended, if the elector's intent can be ascertained
15 from the ballot itself.

16 **SECTION 17.** 7.52 (1) (b) of the statutes is amended to read:

17 7.52 (1) (b) A municipality that adopts the canvassing procedure under this
18 section may appoint additional inspectors under s. 7.30 (2) (a) to assist the absentee
19 ballot board of canvassers in canvassing absentee ballots under this section. In such
20 case, an odd number of inspectors shall be appointed, and at no time may there be
21 less than 3 inspectors who serve. Except as authorized in s. 7.30 (4) (c), all inspectors
22 shall be affiliated with one of the 2 recognized political parties receiving the largest
23 numbers of votes for president, or for governor in nonpresidential general election
24 years, in the municipality. The party whose candidate received the largest number
25 of votes in the municipality is entitled to one more inspector than the party whose

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1 candidate received the next largest number of votes in the municipality. Each
2 inspector so appointed shall be a qualified elector of the municipality, except that if
3 the municipality cannot identify a sufficient number of qualified electors of the
4 municipality to serve as inspectors, the municipality may appoint qualified electors
5 of the county in which the municipality is located to serve as inspectors. The
6 inspectors who are appointed under this paragraph shall serve under the direction
7 and supervision of the board of absentee ballot canvassers.

8 **SECTION 18.** 7.60 (5) (a) of the statutes is amended to read:

9 7.60 (5) (a) Immediately following the canvass, the county clerk shall deliver
10 or transmit to the elections commission in a manner prescribed by the commission
11 a certified copy of each statement of the county board of canvassers for president and
12 vice president, state officials, senators and representatives in congress, state
13 legislators, justice, court of appeals judge, circuit judge, district attorney, and
14 metropolitan sewerage commissioners, if the commissioners are elected under s.
15 200.09 (11) (am). The statement shall record the returns for each office or
16 referendum by ward, unless combined returns are authorized under s. 5.15 (6) (b) in
17 which case the statement shall record the returns for each group of combined wards.
18 Following primaries the county clerk shall enclose on forms prescribed by the
19 elections commission the names, party or principle designation, if any, and number
20 of votes received by each candidate recorded in the same manner. The county clerk
21 shall deliver or transmit the certified statement to the elections commission no later
22 than 9 days after each primary except the partisan primary, no later than 10 days
23 after the partisan primary and any other election except the general election, and no
24 later than 14 days after the general election. The board of canvassers shall deliver

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1 or transmit a certified copy of each statement for any technical college district
2 referendum to the secretary of the technical college district board.

3 **SECTION 19.** 9.01 (2) of the statutes is amended to read:

4 9.01 (2) NOTICE TO CANDIDATES. When the recount concerns an election for an
5 office, the clerk or body with whom the petition is filed shall promptly prepare a copy
6 of the petition for delivery to each opposing candidate for the same office whose name
7 appears on the ballot. In a recount proceeding for a partisan primary, the clerk or
8 body shall prepare a copy of the petition for delivery to each opposing candidate for
9 the same party nomination for the same office, to each opposing candidate for the
10 party nomination of each other party for the same office and to each independent
11 candidate qualifying to have his or her name placed on the ballot for the succeeding
12 election. A candidate or agent designated by a candidate may personally accept
13 delivery of a copy of the petition. Upon such delivery, the clerk or body shall require
14 the candidate or agent to sign a receipt therefor acknowledging delivery of the
15 petition. If a candidate or agent does not personally accept delivery, the clerk or body
16 shall then attempt to notify the candidate or agent of the petition by electronic mail
17 and by telephone and, upon receiving acknowledgment from the candidate or agent,
18 retain documentation of that notice. If the clerk or body does not receive
19 acknowledgment by electronic mail or by telephone, the clerk or body shall promptly
20 deliver the copies of the petition to the sheriff, who shall promptly deliver the copies
21 of the petition to each candidate at the address given on the candidate's nomination
22 papers, without fee, in the manner provided for service of a summons in civil actions.
23 If the sheriff does not complete service of a copy of the petition to a candidate within
24 24 hours after having received the copy from the clerk or body, the clerk or body shall
25 publish or post notice of the petition. If the clerk or body is required to publish or post

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1 notice of the petition, the clerk or body shall do so at least 24 hours before the start
2 of the recount.

3 **SECTION 20.** 9.10 (2) (e) 9. of the statutes is created to read:

4 9.10 (2) (e) 9. The signer has not legibly printed his or her name in a space
5 provided next to his or her signature.

6 **SECTION 21.** 10.01 (1) of the statutes is amended to read:

7 10.01 (1) The form of the various election notices shall be prescribed by the
8 commission to standardize election notices. To accomplish this purpose, the
9 commission shall ~~make rules and~~ draft whatever forms it considers necessary.
10 Notification or certification lists of candidates or referenda questions sent to the
11 county clerks shall prescribe the form in which the county clerks shall publish the
12 relevant portions of the notice and any additional county offices and referenda
13 questions. The commission shall also prescribe the provisions for municipal notices
14 which shall be sent to each county clerk who shall immediately forward them to each
15 municipal clerk.

16 **SECTION 22.** 10.06 (2) (d) of the statutes is amended to read:

17 10.06 (2) (d) On the Monday preceding the spring primary, when held, the
18 county clerk shall publish a type B notice and, if applicable, a type C notice.

19 **SECTION 23.** 10.06 (2) (f) of the statutes is amended to read:

20 10.06 (2) (f) On the 4th Tuesday preceding the each spring primary and
21 election, the county clerk shall publish a type A notice of any state or county
22 referendum to be held at the primary or election.

23 **SECTION 24.** 10.06 (2) (j) of the statutes is amended to read:

24 10.06 (2) (j) On the Monday preceding the partisan primary, the county clerk
25 shall publish a type B notice and, if applicable, a type C notice.

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1 **SECTION 25.** 10.06 (2) (L) of the statutes is amended to read:

2 10.06 (2) (L) On the 4th Tuesday preceding the each partisan primary and
3 general election, the county clerk shall publish a type A notice of any state or county
4 referendum to be held at the primary or election.

5 **SECTION 26.** 10.06 (3) (as) of the statutes is amended to read:

6 10.06 (3) (as) On the 4th Tuesday preceding the spring primary, when held, the
7 municipal clerk shall publish a type E notice. In cities and villages, the municipal
8 clerk shall publish a type A notice on the 4th Tuesday preceding the spring primary
9 of any ~~direct legislation questions~~ referendum to be voted on held at the primary.

10 **SECTION 27.** 10.06 (3) (b) of the statutes is amended to read:

11 10.06 (3) (b) If there is to be a municipal primary, the municipal clerk shall
12 publish a type B notice on the Monday before the primary election. In cities and
13 villages, the municipal clerk shall publish a type C notice on the Monday before the
14 primary election of any ~~direct legislation questions~~ referendum to be voted on held
15 at the primary.

16 **SECTION 28.** 10.06 (3) (c) of the statutes is amended to read:

17 10.06 (3) (c) On the Monday before the each spring primary and election, the
18 municipal clerk shall publish a type B notice and a type D notice. If there are
19 municipal referenda, the municipal clerk shall publish a type C notice at the same
20 time.

21 **SECTION 29.** 10.06 (3) (d) of the statutes is amended to read:

22 10.06 (3) (d) On the Monday preceding the each partisan primary and general
23 election, the municipal clerk shall publish a type D notice. If there are municipal
24 referenda, the municipal clerk shall publish type B and C notices at the same time.

25 **SECTION 30. Initial applicability.**

