



*The County **Referendum** Process*

An In-Depth Primer

—Andrew T. Phillips and A.J. Peterman, von Briesen & Roper, s.c.

Counties possess general administrative authority to conduct a countywide referendum under Wis. Stat. § 59.52(25). A county board may choose to hold a referendum for either advisory purposes, or to ratify or validate a resolution adopted, or ordinance enacted, by the board that is contingent upon approval in the referendum. For example, a referendum is required to ratify a resolution by the board to increase a county’s operating levy.

A county referendum must be held in accordance with the general elections requirements outlined in Wis. Stat. Chs. 5 to 12. In addition to the general election law requirements, the county must generally take the steps outlined below in order to hold a county referendum.

First, the county board must pass a resolution or seek to enact an ordinance containing the question that is to be submitted to a vote of the electors of the county. The question may be advisory and seek the electors’ opinions. Or, the question may be used to

ratify or validate a resolution or ordinance passed by the board.¹

After the resolution passes, the board must either:

- Call a special referendum for the purpose of submitting the resolution to the electors of the county for approval or rejection;² or
- Specify that the referendum will be held at the next succeeding spring primary or election, partisan primary, or general election. However, the referendum cannot be held at an election that takes place less than 70 days after the adoption of the resolution.

The board must then file the question with the county clerk no later than 70 days prior to the election the question will appear on the ballot (or with such other official or agency that may be responsible for preparing the ballots for the election).³

Then, all required election notices must be published in substantially the same form as prescribed by the Wisconsin Elections Commission (“WEC”).⁴

For a referendum held during a normally held election, the county clerk must publish types A and C notices.

A “type A notice” is a notice of election, and must be published on the 4th Tuesday before an election.⁵ Then, a “type C notice” must be published on the Monday before the election when the referendum is to be held.⁶

The type C notice must contain the date of the referendum, the entire text of the question and the proposed enactment (if any), and any explanatory statement of the effect of either a “yes” or “no” vote. The explanatory statement must be prepared by the county’s corporation counsel.

For a special referendum, the county clerk must file the types A and C notices in the same manner as a standard election. Additionally, the county clerk must file a “type B notice” on the day before the special referendum.

The type B notice contains the relevant portion of voting instructions to electors for the referendum, and specifies the date of the election. If the county uses an electronic voting system, the notice must also include a true, actual-size copy of the ballot containing the question to be voted on, in the form it will appear on the official ballot.

Moreover, when a special county referendum is called, the municipal clerk of each municipality that is wholly or partly contained within the county must also publish type D and E notices of the special referendum.⁷ The “type D notice” must be published on the Monday before the special referendum, and the “type E notice” must be published on the 4th Tuesday before the special referendum.⁸

The electors of the county then vote on the question at either the election or special referendum.

In addition to the general process required to hold a county referendum, further requirements some-

times apply in order to ratify certain county board resolutions and ordinances. For example, if a county board wishes to increase the county’s operating levy, the board must put the resolution to a referendum for ratification by the electors of the county. The steps that follow must be taken in addition to the general referendum process when conducting a referendum to ratify this type of resolution.

The resolution adopted by the board must specify either the operating levy rate, or the operating levy, that the board wishes to impose. It must also include a specified number of years or an indefinite period.⁹ The question submitted for the referendum must meet the following criteria:

- If the resolution specifies the operating levy rate, the question must be provided as follows:

“Under state law, the operating levy rate for the County of [____], for the tax to be imposed for the year [insert applicable year], is limited to [\$____] per \$1,000 of equalized value. Shall County of [____] be allowed to exceed this rate limit for [insert number of years or state “an indefinite period”] by [\$____] per \$1,000 of equalized value that results in an operating levy rate of [\$____] per \$1,000 of equalized value?”

- If the resolution specifies the operating levy amount, the question must be provided as follows:

“Under state law, the operating levy rate for the County of [____], for the tax to be imposed for the year [insert applicable year], is limited to [\$____] per \$1,000 of equalized value. Notwithstanding the operating levy rate limit, shall the County of [____] be allowed to levy an amount not to exceed [\$____] for operating purposes for the year [insert applicable year], which may increase the operating levy rate for [a specified number of years or state “an indefinite period”]? This would allow a [____]% increase above the levy of \$[insert preceding year operating levy] for the year [insert preceding year].”

Along with the types A, B, and C notices, the county clerk must also publish types D and E notices for the referendum.¹⁰ A “type D notice” must be pub-

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lished on the day preceding the election or special referendum. It must state the hours the polls will be open and the locations of the polling places, or contain a brief statement indicating how polling information may be obtained.

A “type E notice” must be published on the 4th Tuesday before the election or special referendum.¹¹ It must state the qualifications for absentee voting; the procedures for obtaining an absentee ballot in the case of registered and unregistered voters; the places and the deadlines for application and return of application, including any alternate site; and, the office hours when an elector may cast an absentee ballot in the municipal clerk’s office or at an alternate site.

Once the referendum is complete, the county clerk must certify the results to the Wisconsin Department of Revenue within 14 days after the referendum.¹²

It is also important that the correct form of ballot is used when holding a referendum. For either a special referendum, or a referendum held in conjunction with another election, the referendum must be presented on a separate ballot, and be sub-

stantially in the form of the standard referendum ballot form provided by WEC.¹³ However, more than one referendum question may appear on the same ballot. The ballot must also present a concise statement describing each question in accordance with the resolution requiring the referendum. The statement must be drafted by the county’s corporation counsel. Finally, different colors must also be used to distinguish ballots for county offices and referendum ballots.

Andy Phillips has dedicated his career to assisting local governments, school districts and businesses with their most challenging legal problems. Andy brings innovative solutions to the organizational, operational and personnel problems facing local governments and has been a leader in creating consortiums efficiently in areas such as Medicaid programming, human services and long term care. Andy serves as General Counsel for the Wisconsin Counties Association, a position which he has held for the past decade.

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Endnotes

- 1 Wis. Stat. § 59.52(25)
- 2 See Wis. Stat. § 8.55
- 3 Wis. Stat. § 8.37
- 4 The forms published by the WEC are available at: <http://elections.wi.gov/clerks/notices>
- 5 Wis. Stat. §§10.06(2)(f) and 10.06(2)(L)
- 6 Wis. Stat. §§ 10.06(g) and 10.06 (m)
- 7 Wis. Stat. § 8.55(3)
- 8 Wis. Stat. § 10.06(3)
- 9 See Wis. Stat. § 59.605(3)
- 10 Wis. Stat. § 59.605(3)
- 11 Wis. Stat. § 10.01(2).
- 12 Wis. Stat. § 59.605(3)(a)4.
- 13 The published ballot forms are available at: <http://elections.wi.gov/forms/ballots>.

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Join the Wisconsin Academy and partners for a two-day local government summit to learn about practical resources and explore emerging issues in local energy planning and resilience in Wisconsin communities.

DAY ONE

12:00-1:00pm: Registration & Refreshments

1:00-1:25pm: Welcome

1:30-3:00pm: Workshop 1 (select one)

- What is Resiliency & How Can We Integrate It into Our Communities?
- How to Implement & Measure Energy Efficiency

3:00-3:15pm: Break

3:15-4:45pm: Workshop 2 (select one)

- Transportation: Fleet Efficiency & Electric Vehicles
- Workforce Development

4:45-5:00pm: Closing Remarks

5:00-6:30pm: Reception
(with live music and refreshments)

DAY TWO

7:45-8:30am: Registration & Breakfast

8:30-9:00am: Welcome

9:00-9:50am: Advanced Energy Goals
& How Communities Are Leading the Charge

9:50-10:05am: Break

10:05-10:55am: Solar Energy Financing

10:55-11:45am: Energy Systems of the Future

11:45am: Lunch

12:30-1:15pm: Keynote

1:15-1:30pm: Closing Remarks

Questions? Contact Wisconsin Academy Initiatives
director Chelsea Chandler at 608-263-1692 x20 or
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