



2005 SENATE BILL 34

February 2, 2005 - Introduced by Senators LEIBHAM and LASSA, cosponsored by Representatives LOEFFELHOLZ, NASS, LEMAHIEU and OTT. Referred to Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform.

1 **AN ACT to amend** 8.50 (intro.), 8.50 (1) (a) and (b), 8.50 (2) (b), 8.50 (4) (fm), 17.21
2 (3), 17.23 (1) (a) and (c), 17.24 (2), 17.25 (1) and 59.10 (3) (e) of the statutes;
3 **relating to:** the method of filling vacancies in certain county, city, village, and
4 town elective offices.

Analysis by the Legislative Reference Bureau

Currently, vacancies in the statutory offices of county clerk, treasurer, or surveyor are filled by appointment of the county board of supervisors for the remainder of the unexpired term. Vacancies in the office of county supervisor, except in counties having a population of 500,000 or more (Milwaukee) and counties having only one town (Menominee), are filled by the chairperson of the county board of supervisors. Vacancies in the office of municipal judge are filled by temporary appointment of the municipal governing body. Vacancies in the office of mayor or alderperson in second, third, or fourth class cities are filled by temporary appointment of the common council. Vacancies in most other city offices, including offices in first class cities, are filled by temporary appointment of the mayor. If a vacancy in the office of municipal judge or in a city office described above occurs on or before December 1 preceding a spring election, it is filled at that election; otherwise it is filled at the second succeeding spring election. Vacancies in village offices are filled by the village board of trustees, except that if a vacancy occurs on or before December 1 preceding a spring election the vacancy may be filled at that election; otherwise it may be filled at the second succeeding spring election.

SENATE BILL 34

Vacancies in most town offices are filled by appointment of the town board of supervisors.

This bill permits a county board of supervisors, common council, village board of trustees, or town board of supervisors to order a special election to be held to fill any of these vacancies in a county, city, village, or town office, respectively, if the vacancy occurs before June 1 preceding expiration of the term of office. If the special election is ordered during the period beginning on June 1 and ending on November 30 of any year, the special election is held on the date of the following spring election and the special primary, if any, is held on the date of the spring primary. If the special election is ordered during the period beginning on December 1 and ending on May 31 of the following year, the special election is held on the Tuesday after the first Monday in November following the date of the order and the primary, if any, is held on the second Tuesday in September. If a municipal judge serves more than one municipality, the bill requires any special election to be called by the governing bodies of all municipalities served by the judge.

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

1 **SECTION 1.** 8.50 (intro.) of the statutes is amended to read:

2 **8.50 Special elections.** (intro.) Unless otherwise provided, this section

3 applies to filling vacancies in the U.S. senate and house of representatives, executive

4 state offices except the offices of governor, lieutenant governor, and district attorney,

5 judicial and legislative state offices, county, city, village, and town offices, and the

6 offices of municipal judge and member of the board of school directors in school

7 districts organized under ch. 119. State legislative offices may be filled in

8 anticipation of the occurrence of a vacancy whenever authorized in sub. (4) (e). No

9 special election may be held after February 1 preceding the spring election unless it

10 is held on the same day as the spring election, nor after September 1 preceding the

11 general election unless it is held on the same day as the general election, until the

12 day after that election. If the special election is held on the day of the general

13 election, the primary for the special election, if any, shall be held on the day of the

14 September primary. If the special election is held on the day of the spring election,

SENATE BILL 34

1 the primary for the special election, if any, shall be held on the day of the spring
2 primary.

3 **SECTION 2.** 8.50 (1) (a) and (b) of the statutes are amended to read:

4 8.50 (1) (a) When there is to be a special election, the special election for county
5 clerk ~~shall be ordered by the sheriff; the special election for any other county office~~
6 shall be ordered by the county clerk board of supervisors except as provided in s.
7 17.21 (5); the special election for city office shall be ordered by the common council;
8 the special election for village office shall be ordered by the board of trustees; the
9 special election for town office shall be ordered by the town board of supervisors; the
10 special election for school board member in a school district organized under ch. 119
11 shall be ordered by the school board; the special election for municipal judge shall
12 be ordered by the ~~mayor, president or chairperson~~ governing body of the
13 municipality, except in 1st class cities, or if the judge is elected under s. 755.01 (4)
14 jointly by the ~~mayors, presidents or chairpersons~~ governing bodies of all
15 municipalities served by the judge; and all other special elections shall be ordered
16 by the governor. When the governor or attorney general issues the order, it shall be
17 filed and recorded in the office of the board. When the county clerk ~~or sheriff~~ board
18 of supervisors issues the order, it shall be filed and recorded in the office of the county
19 clerk. When the county executive issues the order, it shall be filed in the office of the
20 county board of election commissioners. When the common council issues the order,
21 it shall be filed in the office of the city clerk. When the board of trustees issues the
22 order, it shall be filed in the office of the village clerk. When the town board of
23 supervisors issues the order, it shall be filed in the office of the town clerk. When the
24 school board of a school district organized under ch. 119 issues the order, it shall be
25 filed and recorded in the office of the city board of election commissioners. ~~When the~~

SENATE BILL 34**SECTION 2**

1 ~~mayor, president or chairperson issues the order, it shall be filed in the office of the~~
2 ~~municipal clerk or city board of election commissioners.~~ If a municipal judge is
3 elected under s. 755.01 (4), the order shall be filed in the office of the county clerk or
4 board of election commissioners of the county having the largest portion of the
5 population of the jurisdiction served by the judge.

6 (b) Notice of any special election shall be given upon the filing of the order under
7 par. (a) by publication in a newspaper under ch. 985. If the special election concerns
8 a national or state office, the board shall give notice as soon as possible to the county
9 clerks. Upon receipt of notice from the board, or when the special election is for a
10 county office or a municipal judgeship under s. 755.01 (4), the county clerk shall give
11 notice as soon as possible to the municipal clerks of all municipalities in which
12 electors are eligible to vote in the election and publish one type A notice for all offices
13 to be voted upon within the county as provided in s. 10.06 (2) (n) and. If the special
14 election is for a city, village, or town office, the municipal clerk shall publish one type
15 A notice as provided under s. 10.06 (3) (f).

16 **SECTION 3.** 8.50 (2) (b) of the statutes is amended to read:

17 8.50 (2) (b) If a primary is required, the primary shall be on the day 4 weeks
18 before the day of the special election except when the special election is held on the
19 same day as the general election the special primary shall be held on the same day
20 as the September primary or if the special election is held concurrently with the
21 spring election, the primary shall be held concurrently with the spring primary, and
22 except when the special election is held on the Tuesday after the first Monday in
23 November of an odd-numbered year, the primary shall be held on the 2nd Tuesday
24 of September in that year.

25 **SECTION 4.** 8.50 (4) (fm) of the statutes is amended to read:

SENATE BILL 34

1 8.50 (4) (fm) A permanent vacancy in the office of municipal judge may be filled
2 by temporary appointment of the municipal governing body, or, if the judge is elected
3 under s. 755.01 (4), jointly by the governing bodies of all municipalities served by the
4 judge. The office shall then be permanently filled by special election, which shall be
5 held concurrently with the next spring election following the occurrence of the
6 vacancy, except that a vacancy occurring during the period after December 1 and on
7 or before the date of the spring election shall be filled at the 2nd succeeding spring
8 election, and no such election may be held after the expiration of the term of office
9 nor at the time of holding the regular election for the office except that the municipal
10 governing body or, if the judge is elected under s. 755.01 (4), the municipal governing
11 bodies may, if the vacancy occurs before June 1 in the year preceding expiration of
12 the term of office, order a special election to be held on the Tuesday after the first
13 Monday in November following the date of the order. A person so elected shall serve
14 for the residue of the unexpired term.

15 **SECTION 5.** 17.21 (3) of the statutes is amended to read:

16 17.21 (3) COUNTY CLERK, TREASURER, AND SURVEYOR. In the office of county clerk,
17 treasurer, or surveyor, by appointment by the county board for the residue of the
18 unexpired term unless a special election is ordered by the county board, in which case
19 the person appointed shall serve until his or her successor is elected and qualified.
20 The county board may, if a vacancy occurs before June 1 in the year preceding
21 expiration of the term of office, order a special election to fill the vacancy. If the
22 county board orders a special election during the period beginning on June 1 and
23 ending on November 30 of any year, the special election shall be held concurrently
24 with the succeeding spring election. If the county board orders a special election
25 during the period beginning on December 1 and ending on May 31 of the succeeding

SENATE BILL 34**SECTION 5**

1 year, the special election shall be held on the Tuesday after the first Monday in
2 November following the date of the order. A person so elected shall serve for the
3 residue of the unexpired term.

4 **SECTION 6.** 17.23 (1) (a) and (c) of the statutes are amended to read:

5 17.23 (1) (a) In cities of the 2nd, 3rd, or 4th class, in the office of mayor, except
6 as provided in s. 9.10, by appointment by the common council for the residue of the
7 unexpired term unless a special election is ordered by the common council, in which
8 case the person appointed shall serve until his or her successor is elected and
9 qualified. In the office of alderperson, by the common council, except as provided in
10 s. 9.10. A person so appointed shall hold office until a successor is elected and
11 qualified. ~~A- Unless otherwise ordered by the common council, a successor shall be~~
12 ~~elected for the residue of the unexpired term on the first Tuesday of April next after~~
13 ~~the vacancy happens, in case it happens no later than December 1 preceding the first~~
14 ~~Tuesday in April, but if the vacancy happens after December 1 preceding the first~~
15 ~~Tuesday in April and before that day, then the successor shall be elected on the first~~
16 ~~Tuesday in April of the next ensuing year; but no election to fill a vacancy in such~~
17 ~~office may be held at the time of holding the regular election for that office. The~~
18 ~~common council may, if a vacancy occurs before June 1 in the year preceding~~
19 ~~expiration of the term of office, order a special election to fill a vacancy to be held on~~
20 ~~the Tuesday after the first Monday in November following the date of the order. A~~
21 ~~person so elected shall serve for the residue of the unexpired term.~~

22 (c) In the office of any other elective officer, and except as provided in s. 9.10,
23 by appointment by the mayor subject to confirmation by the common council, for the
24 residue of the unexpired term unless a special election is ordered by the common
25 council, except that in case of vacancies in the office of any such officer of a 1st class

SENATE BILL 34

1 city of the first class who is authorized by law to have a deputy, such deputy shall
2 perform the duties of such office, and shall be entitled to the emoluments of such
3 office during the remainder of the term. A person so appointed and confirmed shall
4 hold office until a successor is elected and qualifies. The successor shall be elected
5 as provided in par. (a).

6 **SECTION 7.** 17.24 (2) of the statutes is amended to read:

7 17.24 (2) Except as provided in s. 8.50 (4) (fm), a vacancy in any elective office
8 in a village may be filled by special election of a successor for the residue of the
9 unexpired term on the first Tuesday of April next after the vacancy happens, if it
10 happens no later than December 1 preceding the first Tuesday in April, but if the
11 vacancy happens after December 1 preceding the first Tuesday of April, then the
12 successor shall be elected on the first Tuesday of April of the next ensuing year; ~~but~~
13 ~~no election to fill a vacancy in the office may be held at the time of holding the regular~~
14 ~~election for the office, and if the vacancy occurs before June 1 of the year preceding~~
15 ~~the expiration of the term of office, the village board of trustees may order a special~~
16 ~~election to fill the vacancy to be held on the Tuesday after the first Monday in~~
17 ~~November following the date of the order. A person so elected shall serve for the~~
18 remainder of the unexpired term.

19 **SECTION 8.** 17.25 (1) of the statutes is amended to read:

20 17.25 (1) In the town board, by the remaining supervisors and the town clerk,
21 except when a special election is authorized under this subsection or as provided in
22 s. 9.10, and except when the vacancy is caused by removal by the circuit judge as
23 provided by law, which latter vacancy shall be filled by appointment by that judge.
24 Vacancies in other elective town offices shall be filled by appointment by the town
25 board, except when a special election is authorized under this subsection or as

SENATE BILL 34**SECTION 8**

1 provided in ss. 8.50 (4) (fm) and 9.10, and except for vacancies caused by removal by
2 the judge of the circuit court which latter vacancy shall be filled by that judge.
3 Persons appointed under this subsection to fill vacancies shall hold office for the
4 residue of the unexpired term or, if a special election is ordered to fill a vacancy, until
5 the successor is elected and qualified, except persons appointed to fill vacancies as
6 members of the water or light commission, which persons shall hold office only until
7 their successors are elected and qualify and such successors shall be elected at the
8 annual town meeting next after the vacancy occurs if the vacancy occurs 12 days or
9 more prior to the meeting; otherwise at the annual town meeting held in the year
10 next succeeding; ~~but no election to fill a vacancy in the office may be held at the time~~
11 ~~of holding the regular election for the office~~ unless a special election is ordered to fill
12 the vacancy at an earlier date, in which case they shall hold office until their
13 successors are elected and qualify. The town board may, if a vacancy occurs before
14 June 1 in the year preceding expiration of the term of office, order a special election
15 to fill the vacancy. If the town board orders a special election during the period
16 beginning on June 1 and ending on November 30 of any year, the special election
17 shall be held concurrently with the succeeding spring election. If the town board
18 orders a special election during the period beginning on December 1 and ending on
19 May 31 of the succeeding year, the special election shall be held on the Tuesday after
20 the first Monday in November following the date of the order. A person so elected
21 shall serve for the residue of the unexpired term.

22 **SECTION 9.** 59.10 (3) (e) of the statutes is amended to read:

23 59.10 (3) (e) *Vacancies.* If a vacancy occurs on the board, the board chairperson,
24 with the approval of the board, shall appoint a person who is a qualified elector and
25 resident of the supervisory district to fill the vacancy. The successor shall serve for

SENATE BILL 34

1 the unexpired portion of the term to which the person is appointed and until his or
2 her successor is elected and qualified, unless the board orders a special election to
3 fill the vacancy, in which case the person appointed shall serve until his or her
4 successor is elected and qualified. The board may, if a vacancy occurs before June
5 1 in the year preceding expiration of the term of office, order a special election to fill
6 the vacancy. If the board orders a special election during the period beginning on
7 June 1 and ending on November 30 of any year, the special election shall be held
8 concurrently with the succeeding spring election. If the board orders a special
9 election during the period beginning on December 1 and ending on May 31 of the
10 succeeding year, the special election shall be held on the Tuesday after the first
11 Monday in November following the date of the order. A person so elected shall serve
12 for the residue of the unexpired term.

13 **SECTION 10. Initial applicability.**

14 (1) This act first applies with respect to vacancies occurring on the effective
15 date of this subsection.

16 (END)