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# Wisconsin Legislative Council

## ACT MEMO

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### 2019 Wisconsin Act 140 [2019 Assembly Bill 661]

### Various Provisions Related to Town Officials; Temporary Use Permit Appeals; Board of Review Notices; and Open Meetings Law Notices

2019 Wisconsin Act 140 contains provisions related to the appointment, removal, and wages of a town official; the process for appealing the denial of a temporary use permit; the process of providing notice of a Board of Review proceeding; and the method of providing notice to the public under the state's Open Meetings Law.

## TOWN OFFICIALS: APPOINTMENT, REMOVAL, AND WAGES

### Vacancies on a Town Board

The size of town boards range from three-member to seven-member boards. In the event of a vacancy on the town board, the vacancy may be filled at a special election or by an appointment made by the remaining town board supervisors and the town clerk. **The act** creates new procedures for situations in which there are two vacancies on a town board and the number of vacancies result in less than three individuals available to make appointments. Specifically, the act provides the following:

- When there are two vacancies on the town board, the remaining town board supervisors, the town clerk, and the town treasurer must appoint an individual to fill one vacancy and the remaining supervisors, including the appointee and the clerk, must appoint an individual to fill the other vacancy.
- If the number of vacancies on the town board are such that there are not at least three individuals available to make appointments, including any remaining supervisors, the town clerk, and the town treasurer, then the town clerk or the county clerk if the town clerk position is vacant, must call a special town meeting for the electors to vote to fill the number of vacancies necessary in order to follow the appointment procedure specified in the first bullet point above.

### Timing of Appointment of Town Clerks, Treasurers, and Combined Clerks and Treasurers by Town Meeting

In general, state law requires a person be elected to serve as the town clerk or town treasurer or in the combined office of town clerk and town treasurer. However, a town with a population of 2,500 or more may authorize, by town meeting, its town board to fill these offices by appointment. The person initially appointed may not take office until the term of the office expires. Under **prior law**, the town board was required to make the initial appointment not less than 30 days nor more than 60 days after the annual town meeting at which authorization was given for the town board to make such appointments.

**The act** eliminates the requirement specifying when the town board must make its initial appointment so that the town board may make its initial appointment at any time. Specifically, under the act, a town board that is authorized to appoint a person to serve as the town clerk or town treasurer or in the combined office of town clerk and town treasurer is not required to make the initial appointment not less than 30 days nor more than 60 days after the annual town meeting at which authorization was given for the town board to make such appointments.

### **Term of Appointment for Town Assessors**

Very generally, if a town is not under the jurisdiction of a county assessor, a town board may select town assessors by appointment, if authorized by the town meeting. The statutes set forth two methods for doing so. The first method for appointing an assessor is through the civil service process. If the town does not have a civil service process, the town board may adopt a civil service system for the selection of assessors. The second method for appointing an assessor, if the town does not have or adopt a civil service system, requires the town board to appoint assessors on the basis of merit, experience, and general qualifications.

Under **prior law**, if the town board did not have or adopt a civil service system and utilized the second method for appointing an assessor, the term of appointment for the town assessor could not exceed three years. Under **the act**, the term of appointment for the town assessor may not exceed five years.

### **Removal of Elected Town Officers**

The statutes set forth a process by which elected and appointed officials may be removed. For example, an elected village officer may be removed by a majority vote of all of the members of the village board, because of either of the following: (1) continued physical inability to perform the duties of office; or (2) gross neglect of duty. Also, any village officer, elected or appointed, may be removed for cause by the judge of the circuit court for the circuit where the village is situated.

Under **prior law**, an elected town officer could only be removed for cause by the circuit court for the circuit where the town was located. **The act** creates a process, similar to the process for removing elected village board officials, for removing elected town officers. Under the act, any elective town officer may be removed by a majority vote of all the members of the town board, because of either continued physical inability to perform the duties of office or gross neglect of duty.

### **Discharging Town Officer's Duties When Officer Is Temporarily Incapacitated**

The statutes authorize a city council and a village board to appoint a person to discharge a city council member's or village board member's duties, respectively, if the council member or village board member is temporarily incapacitated because of physical or mental disability. The statutes authorize the temporary appointment to last until the disability is removed.

**The act** gives this same appointment authority to the town board. Under the act, if a town board supervisor is temporarily incapacitated because of physical or mental disability, the town board may appoint a person to discharge the supervisor's duties until the disability is removed.

### **Wages of Elected Town Officers Serving as Town Employees**

The statutes set forth the wages that an elected town officer may receive for serving as a town employee. For example, an elected officer who was a town clerk, town treasurer, or an officer serving in a combined office of town clerk and town treasurer, who also serves as a town employee may be paid an hourly wage for serving as a town employee, not to exceed a total of \$15,000 each year. Under **prior law**, any other elected town officer, such as a town board supervisor or town board chairperson, could

be paid an hourly wage for serving as a town employee, not to exceed a total of \$5,000 each year. Under **the act**, any elected town officer who also serves as a town employee may be paid an hourly wage for serving as an employee, not to exceed a total of \$15,000 each year.

## **BUILDING CODE TEMPORARY USE PERMITS: PROCESS FOR APPEALING DENIALS**

Very generally and subject to various restrictions, a municipal fire code official (i.e., fire chief) or a building code official may issue a temporary use permit that allows an existing building or a portion of an existing building to be used temporarily in a manner that differs from the approved use for the building or space.

**The act** creates a process for appealing the denial of a temporary use permit or an extension of a temporary use permit when the denial is a fire chief or an authorized individual acting on the fire chief's behalf. Under the act, if the applicant is denied either a temporary use permit or an extension of a temporary use permit, the applicant may appeal to the town board, village board, or city's common council, whichever is applicable, if: (1) the individual denying the permit or extension is the chief of a fire district, or an authorized individual acting on the chief's behalf; and (2) the basis of the denial is a discretionary determination by the chief or authorized individual. Following a hearing on the denial, the board or common council may approve the applicant's temporary use permit or extension application.

## **BOARD OF REVIEW PROCEEDINGS: METHOD OF PROVIDING NOTICE**

At least 15 days before the first session of a city's, village's, or town's (municipality) board of review, or at least 30 days before the first session of the board of review in any year in which the municipality conducts a revaluation, the clerk of the board must provide notice of the time and place of the first meeting and of certain specified procedures related to the property valuation objections. Under prior law, the clerk was required to provide notice by doing all of the following:

- Publishing a class 1 notice.
- Placing a notice in at least three public places.
- Placing a notice on the door of the town hall, village hall, council chambers, or city hall, whichever is applicable.

**The act** makes two changes to the methods by which the clerk of a board of review must provide notice of the board's meetings. First, the act clarifies that the definition of a class 1 notice, and the method by which such notice may be published, is found in ch. 985, Stats., the chapter related to legal notices. Second, the act eliminates the requirements that the clerk place a notice: (1) in at least three public places; and (2) on the door of the town hall, village hall, council chambers, or city hall, whichever is applicable. As a result of these two changes combined, under the act, the clerk must provide notice of the board of review's proceedings by publishing a class 1 notice, under ch. 985, Stats.

## **OPEN MEETINGS LAW: METHOD OF PROVIDING NOTICE TO THE PUBLIC**

Under the Open Meetings Law, notice of a governmental body's meeting must be given by communication of the chief presiding officer of that governmental body, or that person's designee, to all of the following:

- The public.

- Any news media who have filed a written request for such notice.
- To the official newspaper designated under the provisions found in ch. 985, Stats., related to the publication of legal notices, or if none exists, to a news medium likely to give notice in the area.

**Prior law** did not specify the method that a governmental body must use when providing notice under the Open Meetings Law to the public. **The act** specifies that when the chief presiding officer of a governmental body, or that person's designee, provides an open meetings notice to the public, the notice must be made using one of the following methods:

- Posting a notice in at least three public places likely to give notice to persons affected.
- Posting a notice in at least one public place likely to give notice to persons affected and placing a notice electronically on the governmental body's intranet site.
- By paid publication in a news medium likely to give notice to persons affected.

**Effective date:** March 5, 2020

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