



To: Representative Weininger, Chair – Assembly Committee on State Affairs
and Government Operations and Committee Members

From: Wisconsin Educational Media & Technology Association

Date: February 5, 2014

Re: Assembly Joint Resolution 48

It is very important for the school library community that the Board of Commissioners of Public Lands (BCPL) continues to be represented by the Secretary of State and State Treasurer, as established by the Constitution.

This proposal creates an uncertain future for the state of public school library funding, and the proposed substitute amendment to AJR 48 and introduction of AJR 85 does not remedy these concerns. Replacing the Secretary of State and State Treasurer with the State Superintendent of Public Instruction and the Lieutenant Governor on the BCPL could jeopardize our founding fathers' commitment to maintaining a constitutionally protected form of school library funding. The current BCPL Commissioners do not play a leading role in K-12 school funding or the state budget process—this makes them ideal custodians of the Common School Fund and helps protect the integrity of the fund.

From the founding of our state, the people of Wisconsin have valued the importance of strong communities and schools. The BCPL supports our schools and communities by providing favorable loans to municipalities and funds for school library resources through the Common School Fund, which is the only dedicated source of K-12 school library funding in Wisconsin. In fact, the fund has been so well managed, that the BCPL provided \$122 million for community projects across Wisconsin and \$30.1 million to Wisconsin School Libraries in the last year alone.

Common School Fund disbursements provided by BCPL are used to purchase books, newspapers, periodicals, and other library materials - including computers and related software.

With school districts facing increased budget constraints, the vast majority of school libraries rely on Common School Fund distributions as their sole funding source for the purchase of informational resources. Strong public school libraries, with quality resources, are essential to the academic success of Wisconsin's children, especially in the area of reading.

Wisconsin has a unique program overseen by the Commissioners of Public Lands, which operates at no expense to Wisconsin taxpayers and gives much back. We are concerned that a complicated process to change the state constitution may not save as much money as projected, will require a lengthy legislative and election process, and may have unintended consequences affecting the future performance of the fund.

Therefore, WEMTA supports keeping the positions of Secretary of State and State Treasurer in the State Constitution so that they can maintain their roles as members of the Board of Commissioners of Public Lands.

Please do not hesitate to contact me if you require additional information.

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WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE MICHAEL SCHRAA

FROM: Anna Henning, Staff Attorney, and Melissa Schmidt, Senior Staff Attorney

RE: Board of Commissioners of Public Lands Functions Under Assembly Substitute Amendment __ (LRBs0137/1) to 2013 Assembly Joint Resolution 48, Relating to Deleting from the Constitution the Office of State Treasurer

DATE: November 4, 2013

This memorandum responds to your request for an analysis of the effect of Assembly Substitute Amendment __ (LRBs0137/1) to 2013 Assembly Joint Resolution 48. Assembly Joint Resolution 48 relates to the deletion of the offices of treasurer and secretary of state on the Board of Commissioners of Public Lands (BCPL). The substitute amendment would delete only the office of the treasurer.

You asked whether the substitute amendment would impair the ability of the BCPL to either: (1) operate as a three-member body; or (2) satisfy the two-member quorum requirement as specified by Wis. Const. art. X, s. 7. The BCPL is comprised of three members, each of whom is a constitutional officer. As is described in greater detail below, if the changes proposed by the substitute amendment to delete the office of the treasurer and replace his or her position on BCPL are ratified by the voters as part of one question, then it appears that the BCPL would remain a three-member board. In that case, the substitute amendment would not affect the BCPL's ability to form a quorum to carry out its responsibilities.

2013 ASSEMBLY JOINT RESOLUTION 48

2013 Assembly Joint Resolution 48 proposes an amendment to the Wisconsin Constitution, upon first consideration, that would do all of the following:¹

¹ Wisconsin Constitution, Article XII, Section 1, requires proposed amendments to the Wisconsin Constitution to be passed by both the Assembly and the Senate in two successive Legislatures and then submitted to the electorate for ratification before they may take effect. Assembly Joint Resolution 48 is the first consideration of the proposed amendment.

- Eliminate the constitutional Office of the Secretary of State.
- Eliminate the constitutional Office of the State Treasurer.
- If the Office of Secretary of State is eliminated, replace that position in the line for gubernatorial succession with the Attorney General.
- If either the Office of the Secretary of State or the Office of the State Treasurer is eliminated, replace that position on the BCPL with the Lieutenant Governor.
- If both the Office of the Secretary of State and the Office of the State Treasurer are eliminated, replace those positions on BCPL with the Lieutenant Governor and the State Superintendent of Public Instruction (State Superintendent).
- If the Office of State Treasurer is eliminated, change the process of making annual interest payments on the purchase of school or university lands that were not paid at the time of the sale such that these annual interest payments be payable as provided by law, rather than to the State Treasurer.

The joint resolution also specifies that the following two ballot questions should be posed to the voters for ratification:

- "Shall the office of secretary of state be deleted from the constitution?"
- "Shall the office of state treasurer be deleted from the constitution?"

THE SUBSTITUTE AMENDMENT

The substitute amendment makes only those changes included in Assembly Joint Resolution 48 that relate to deleting the office of the state treasurer from the Wisconsin Constitution. Specifically, the substitute amendment proposes an amendment to the Wisconsin Constitution that would do all of the following:

- Eliminate the constitutional Office of the State Treasurer.
- If the Office of the State Treasurer is eliminated, replace that position on the BCPL with the Lieutenant Governor.
- If the Office of State Treasurer is eliminated, change the process of making annual interest payments on the purchase of school or university lands that were not paid at the time of the sale such that these annual interest payments be payable as provided by law, rather than to the State Treasurer.

The substitute amendment does not provide specific ballot questions to be posed to the voters for ratification. Legislative procedure directs that ballot questions be included on a joint resolution for **second consideration**. [Joint Rule 57 (1).] However, 2013 Assembly Joint Resolution 48 proposes a constitutional amendment for **first consideration**. If 2013 Assembly Joint Resolution 48 was amended by the substitute amendment, and was subsequently passed by the Legislature on first consideration, such questions would presumably be included in the second consideration of the joint resolution.

THE BOARD OF COMMISSIONERS OF PUBLIC LANDS

Under the Wisconsin Constitution, the Secretary of State, Treasurer, and the Attorney General constitute a board of commissioners for the sale of the school and university lands and the investment of the funds arising from such sales. The constitution further provides that any two of the three BCPL commissioners constitute a quorum for the transaction of all business pertaining to the duties of the board. [Wis. Const. art. X, s. 7.]

DISCUSSION

The effect of the substitute amendment on BCPL's ability to either remain a three-member board or satisfy the two-member quorum requirement when it meets depend on the form of the ballot question or questions posed to the electorate.²

It appears that the Legislature could, within its discretion, propose to amend the constitution to delete the office of treasurer and replace the treasurer with the Lieutenant Governor on the BCPL, as part of a single ballot question. For example, such a question might read: "Shall the office of treasurer be eliminated from the constitution and the treasurer be replaced by the Lieutenant Governor on the Board of Commissioners of Public Lands?"

If the amendments to the constitution proposed in the substitute amendment were ratified by the voters as part of **one ballot question**, then it appears that BCPL would remain a three-member board regardless of the outcome of the ballot question. If the question was ratified, the Attorney General, the Secretary of State, and the Lieutenant Governor would constitute the BCPL once the constitutional amendment took effect. If the question was not ratified, then the Attorney General, the Secretary of State, and the State Treasurer would continue to constitute the BCPL. Thus, in either case, the substitute amendment would retain a three-member BCPL and therefore not amend the constitution in such a way as to affect the BCPL's ability to satisfy the two-member quorum requirement under Wis. Const. art. X, s. 7.

However, if the amendments to the constitution proposed in the substitute amendment were submitted to the voters as part of **two separate ballot questions**, it is possible that the voters could ratify the elimination of the office of treasurer but fail to ratify the replacement of the treasurer with the Lieutenant Governor on the BCPL. BCPL would then become a two-member board instead of a three-member board, and it appears that the presence of both members would be required to satisfy the two-member quorum requirement.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

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² The Legislature has the constitutional authority to determine the ballot questions. [Wis. Const. art. XII, s. 1.] Section 13.175, Stats., provides that a ballot question submitted to the voters for ratification of a proposed amendment to the Wisconsin Constitution must include "a complete statement of the referendum question upon which the voters shall be requested to vote in the form prescribed [by law]." In formulating a ballot question to be asked of the voters, the Wisconsin Supreme Court has held that the Legislature has considerable discretion, but must also act reasonably to form questions that adequately inform voters of all substantive changes proposed as part of a given constitutional amendment. [See *McConkey v. Van Hollen*, 2010 WI 57, ¶25; *Milwaukee Alliance v. Elections Board*, 106 Wis. 2d 593 (1982).]