

2001 ASSEMBLY BILL 863

February 26, 2002 – Introduced by Representatives LEIBHAM, DUFF, BERCEAU, FREESE and GROTHMAN, cosponsored by Senators ROESSLER and GROBSCHMIDT. Referred to Committee on Campaigns and Elections.

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 of 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 2nd, 3rd, or 4th class cities are filled by temporary appointment of the common council. Vacancies in most other city offices, including offices in 1st 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 2nd 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 2nd succeeding spring election. Vacancies in most town offices are filled by appointment of the town board of supervisors.

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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. The election is then 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 2nd 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,
15 the primary for the special election, if any, shall be held on the day of the spring
16 primary.

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

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

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1 board of election commissioners of the county having the largest portion of the
2 population of the jurisdiction served by the judge.

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

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

14 8.50 (2) (b) If a primary is required, the primary shall be on the day 4 weeks
15 before the day of the special election except when the special election is held on the
16 same day as the general election the special primary shall be held on the same day
17 as the September primary or if the special election is held concurrently with the
18 spring election, the primary shall be held concurrently with the spring primary, and
19 except when the special election is held on the Tuesday after the first Monday in
20 November of an odd-numbered year, the primary shall be held on the 2nd Tuesday
21 of September in that year.

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

23 8.50 (4) (fm) A permanent vacancy in the office of municipal judge may be filled
24 by temporary appointment of the municipal governing body, or, if the judge is elected
25 under s. 755.01 (4), jointly by the governing bodies of all municipalities served by the

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

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

13 17.21 (3) COUNTY CLERK, TREASURER, AND SURVEYOR. In the office of county clerk,
14 treasurer, or surveyor, by appointment by the county board for the residue of the
15 unexpired term unless a special election is ordered by the county board, in which case
16 the person appointed shall serve until his or her successor is elected and qualified.
17 The county board may, if a vacancy occurs before June 1 in the year preceding
18 expiration of the term of office, order a special election to fill a vacancy to be held on
19 the Tuesday after the first Monday in November following the date of the order. A
20 person so elected shall serve for the residue of the unexpired term.

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

22 17.23 (1) (a) In cities of the 2nd, 3rd, or 4th class, in the office of mayor, except
23 as provided in s. 9.10, by appointment by the common council for the residue of the
24 unexpired term unless a special election is ordered by the common council, in which
25 case the person appointed shall serve until his or her successor is elected and

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

14 (c) In the office of any other elective officer, and except as provided in s. 9.10,
15 by appointment by the mayor subject to confirmation by the common council, for the
16 residue of the unexpired term unless a special election is ordered by the common
17 council, except that in case of vacancies in the office of any such officer of a 1st class
18 ~~city of the first class~~ who is authorized by law to have a deputy, such deputy shall
19 perform the duties of such office, and shall be entitled to the emoluments of such
20 office during the remainder of the term. A person so appointed and confirmed shall
21 hold office until a successor is elected and qualifies. The successor shall be elected
22 as provided in par. (a).

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

24 17.24 **(2)** Except as provided in s. 8.50 (4) (fm), a vacancy in any elective office
25 in a village may be filled by special election of a successor for the residue of the

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1 unexpired term on the first Tuesday of April next after the vacancy happens, if it
2 happens no later than December 1 preceding the first Tuesday in April, but if the
3 vacancy happens after December 1 preceding the first Tuesday of April, then the
4 successor shall be elected on the first Tuesday of April of the next ensuing year; ~~but~~
5 ~~no election to fill a vacancy in the office may be held at the time of holding the regular~~
6 ~~election for the office~~ and if the vacancy occurs before June 1 of the year preceding
7 the expiration of the term of office, the village board of trustees may order a special
8 election to fill the vacancy to be held on the Tuesday after the first Monday in
9 November following the date of the order. A person so elected shall serve for the
10 remainder of the unexpired term.

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

12 17.25 (1) In the town board, by the remaining supervisors and the town clerk,
13 except when a special election is authorized under this subsection or as provided in
14 s. 9.10₁, and except when the vacancy is caused by removal by the circuit judge as
15 provided by law, which latter vacancy shall be filled by appointment by that judge.
16 Vacancies in other elective town offices shall be filled by appointment by the town
17 board, except when a special election is authorized under this subsection or as
18 provided in ss. 8.50 (4) (fm) and 9.10₁, and except for vacancies caused by removal by
19 the judge of the circuit court which latter vacancy shall be filled by that judge.
20 Persons appointed under this subsection to fill vacancies shall hold office for the
21 residue of the unexpired term or, if a special election is ordered to fill a vacancy, until
22 the successor is elected and qualified, except persons appointed to fill vacancies as
23 members of the water or light commission, which persons shall hold office only until
24 their successors are elected and qualify and such successors shall be elected at the
25 annual town meeting next after the vacancy occurs if the vacancy occurs 12 days or

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1 more prior to the meeting; otherwise at the annual town meeting held in the year
2 next succeeding; but no election to fill a vacancy in the office may be held at the time
3 of holding the regular election for the office unless a special election is ordered to fill
4 the vacancy at an earlier date, in which case they shall hold office until their
5 successors are elected and qualify. The town board may, if a vacancy occurs before
6 June 1 in the year preceding expiration of the term of office, order a special election
7 to be held to fill a vacancy on the Tuesday after the first Monday in November
8 following the date of the order. A person so elected shall serve for the residue of the
9 unexpired term.

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

11 59.10 (3) (e) *Vacancies.* If a vacancy occurs on the board, the board chairperson,
12 with the approval of the board, shall appoint a person who is a qualified elector and
13 resident of the supervisory district to fill the vacancy. The successor shall serve for
14 the unexpired portion of the term to which the person is appointed and until his or
15 her successor is elected and qualified, unless the board orders a special election to
16 fill the vacancy, in which case the person appointed shall serve until his or her
17 successor is elected and qualified. The board may, if a vacancy occurs before June
18 1 in the year preceding expiration of the term of office, order a special election to be
19 held to fill a vacancy on the Tuesday after the first Monday in November following
20 the date of the order. A person so elected shall serve for the residue of the unexpired
21 term.

22 **SECTION 10. Initial applicability.**

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

25 (END)