

2001 DRAFTING REQUEST

Assembly Resolution

Received: **01/30/2001**

Received By: **dykmapj**

Wanted: **Today**

Identical to LRB:

For: **Daniel Vrakas (608) 266-3007**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **dykmapj**

May Contact:

Alt. Drafters:

Subject: **Legislature - rules**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Confirmation of gubernatorial appointments

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	dykmapj 01/30/2001	gilfokm 01/30/2001	haugeca 01/30/2001	_____	lrb_docadmin 01/30/2001		
/2	dykmapj 01/31/2001	gilfokm 01/31/2001	pgreensl 01/31/2001	_____	lrb_docadmin 01/31/2001	lrb_docadmin 01/31/2001	

FE Sent For:

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FE Sent For: *1/2-1/31-01 KMG* *1/31 PG/KF* *PG* **<END>**

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FE Sent For:

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WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Vacancies in the Office of Governor and Lieutenant Governor

CONSTITUTIONAL PROVISIONS

The Wisconsin Constitution provides that upon the Governor's death, resignation or removal from office, the Lieutenant Governor becomes Governor for the balance of the unexpired term. [Wis. Const. art. V, s. 7.]

The Wisconsin Constitution also provides that whenever there is a vacancy in the Office of Lieutenant Governor, the Governor must nominate a successor to serve for the balance of the unexpired term. That person takes office after confirmation by the Senate and by the Assembly. [Wis. Const. art. XIII, s. 10 (2).]

Both of the above constitutional provisions were created in 1979 following ratification by the voters of this state of a constitutional amendment that passed the Legislature in the 1977 and 1979 Sessions. The constitutional amendment resulted from a 1977 situation in which Governor Patrick Lucey left office in the middle of his term to become Ambassador to Mexico. Lieutenant Governor Martin Schreiber, under the Wisconsin Constitution as it existed at that time, became Acting Governor. Under the Constitution as it existed in 1977, Acting Governor Schreiber did not have the authority to appoint a new Lieutenant Governor for the balance of the unexpired term. The constitutional amendment ratified by the voters in 1979 provided that the

Lieutenant Governor became Governor (rather than Acting Governor) and provided a mechanism for filling a vacancy in the Office of Lieutenant Governor. Since ratification of the Constitutional amendment, no Governor has left office in mid-term.

PROCESS FOR CONFIRMING A LIEUTENANT GOVERNOR NOMINEE

Although the Wisconsin Constitution requires Senate and Assembly confirmation of a person nominated to be Lieutenant Governor, the rules of the Assembly or the joint rules do not explicitly provide a mechanism for confirmation. While many gubernatorial appointees are subject to Senate confirmation, there are no appointees, other than a person filling a vacancy in the Office of Lieutenant Governor, who require Assembly confirmation.

Confirmation of a person nominated to be Lieutenant Governor might be undertaken by one of a number of different processes. For example, the joint rules of the two houses could be amended to specify that the confirmation is undertaken by joint resolution. Presumably, the joint resolution would be unamendable since the only question before the two houses is confirmation. Another approach might be to

have the Assembly follow the procedure that the Senate currently follows for confirmation of other appointees; namely, a roll call vote on the question of confirmation. Senate rules also require that gubernatorial nominations be referred to a standing committee. [Senate Rule 22.] In the alternative, the Assembly could adopt an Assembly resolution that provides for confirmation.

In conclusion, the process of confirming a nominee for Lieutenant Governor could take any of several approaches. These might include:

- Amending the joint rules to provide for adoption of a joint resolution by both houses.
- Having the Senate follow its usual confirmation process (referral to a committee and a roll call vote on the

question of confirmation by the Senate) and having the Assembly follow the same process.

- Having the Senate follow its usual confirmation process and having the Assembly adopt an Assembly resolution for confirmation.

If either of the latter two approaches are used, the Assembly could amend its rules to specify that this is the process for Assembly confirmation of a Lieutenant Governor nominee.

This memorandum was prepared on January 12, 2001, by *Richard Sweet, Senior Staff Attorney, Legislative Council Staff.*

WISCONSIN LEGISLATIVE COUNCIL

One East Main Street, Suite 401 • P.O. Box 2536 • Madison, WI 53701-2536

Telephone: (608) 266-1304 • Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

<http://www.legis.state.wi.us/lc>



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

TO: REPRESENTATIVE DANIEL VRAKAS

FROM: Richard Sweet, Senior Staff Attorney

RE: WLC: 0079/1 (Assembly Confirmation of Gubernatorial Nominations)

DATE: January 25, 2001

Attached is WLC: 0079/1, a draft of an Assembly Resolution relating to Assembly confirmation of gubernatorial nominations for appointment. The draft was prepared at your request. The resolution would modify Assembly rules to create a process for confirmation of gubernatorial nominations for appointment that require confirmation by the Assembly. At the current time, the only gubernatorial nomination requiring Assembly confirmation is a nomination by the Governor to fill a vacancy in the Office of Lieutenant Governor. Under the Wisconsin Constitution, if there is such a vacancy in the Office of Lieutenant Governor, the Governor nominates a person to serve for the balance of the unexpired term and that person takes office upon confirmation by the Senate and the Assembly. [Wis. Const. art. XIII, s. 10 (2).]

The draft creates Assembly Rule 51m in chapter 5 of the Assembly Rules, which is entitled "Offering, Introduction and Disposal of Proposals." Assembly Rule 51m would be entitled "Gubernatorial Nominations for Appointment." Under that proposed rule, whenever the Governor submits to the Assembly a nomination for appointment, the Assembly Committee on Organization must introduce an Assembly resolution, at the request of the Governor, to confirm the appointment. The presiding officer refers that resolution to the standing committee that he or she deems to be the most appropriate committee to pass upon the qualifications of the candidate. The committee to which the resolution is referred must report its findings and recommendations to the Assembly in writing. Nominations by the Governor may be considered in special session or regular session.

Proposed Assembly Rule 51m further provides that on the question of adoption of a resolution confirming an appointment by the Governor, the vote must be taken by a verbal calling of the ayes and noes. Adoption of the resolution and all votes related to the resolution require a majority vote of the elected membership. The term "elected membership" is defined in current Assembly Rule 95 (24) as "[t]he members of the assembly certified as elected in the last general election, including those who have subsequently resigned, been removed or have died." Proposed Assembly Rule 51m further provides that a resolution confirming an appointment is not subject to a motion for reconsideration. In

addition, the proposed rule states that the Assembly may, but is not required to, act upon an appointment resubmitted by the Governor when the identical appointment has once been refused confirmation by the Assembly. The Chief Clerk is required to record the cumulative status of all appointments in the Bulletin of Proceedings. Further, the Assembly is required to inform the Governor and the Senate of its final action on confirmation of a nomination for appointment.

The draft also creates Assembly Rule 54 (3) (h) to provide that an amendment to a resolution confirming a gubernatorial nomination for appointment is not germane to the resolution. Finally, the draft amends the definition of Assembly Resolution in current Assembly Rule 95 (71) to provide that the term includes a proposal confirming a gubernatorial nomination for appointment.

Feel free to contact me if I can be of further assistance.

Attachment

Assembly Confirmation

01/24/2001

2001 ASSEMBLY RESOLUTION _____

To amend ASSEMBLY rule 95 (71); and to create ASSEMBLY rules 51m and 54 (3)

(h); relating to: assembly confirmation of gubernatorial nominations for appointment.

Resolved by the assembly, That:

Section 1. **ASSEMBLY** rule 51m is created to read:

ASSEMBLY RULE 51m. Gubernatorial nominations for appointment. (1)

Whenever the governor submits to the assembly a nomination for an appointment as required by law, the assembly committee on organization shall introduce an assembly resolution, at the request of the governor, to confirm the appointment. The presiding officer shall refer the resolution to the standing committee that the presiding officer deems to be the most appropriate committee to pass upon the qualifications of the candidate. The committee to which the resolution is referred shall report its findings and recommendations to the assembly in writing. Nominations by the governor may be considered, and the persons so nominated may with the advice and consent of the assembly be appointed, in special as well as in regular sessions.

(2) On the question of the adoption of a resolution confirming appointments by the governor, notwithstanding rule 76 (4), the vote shall be taken by a verbal calling of the ayes and noes which shall be entered upon the journal. Adoption of the resolution and all

votes related to the resolution require a majority vote of the elected membership. The question of adoption of a resolution confirming appointment shall not be subject to a motion for reconsideration under rule 73, and the assembly may, but shall not be required to, act upon an appointment resubmitted by the governor when the identical appointment has once been refused confirmation by the assembly. The chief clerk shall record the cumulative status of all appointments in the bulletin of proceedings. The assembly shall inform the governor and the senate of its final action on confirmation of a nomination for appointment.

Section 2. **ASSEMBLY** rule 54 (3) (h) is created to read:

ASSEMBLY RULE 54 (3) (h). An amendment to a resolution confirming a gubernatorial nomination for appointment under rule 51m.

Section 3. **ASSEMBLY** rule 95 (71) is amended to read:

ASSEMBLY RULE 95 (71). RESOLUTION, ASSEMBLY: A proposal a) expressing the opinion of the assembly or, b) changing assembly rules or c) confirming a gubernatorial nomination for appointment under rule 51m.

(END)



2001 ASSEMBLY RESOLUTION

D NOTE

10 Jan

1 *To amend* assembly rule 73 (1) (b) and assembly rule 95 (71); and *to create* assembly
2 rule 51m and assembly rule 54 (3) (h); **relating to:** assembly confirmation of
3 nominations for appointment.

Analysis by the Legislative Reference Bureau

This ~~assembly~~ resolution provides the procedure in the assembly rules for the assembly confirmation of nominations for appointment.

4 **Resolved by the assembly, That:**

5 **SECTION 1.** Assembly rule 51m is created to read:

6 **ASSEMBLY RULE 51m. Advice and consent of the assembly.** (1) Whenever
7 the governor submits to the assembly a nomination for an appointment as required
8 by law, the speaker shall refer the nomination to the standing committee that the
9 speaker ~~deems~~ ^{considers} to be the most appropriate committee to pass upon the qualifications
10 of the candidate. The committee shall report its findings and recommendations to
11 the assembly in writing. Nominations by the governor may be considered, and the

9
10
stet

1 persons so nominated may with the advice and consent of the assembly and senate
2 be appointed, in special as well as in regular sessions.

3 (2) On the question of the adoption of a resolution confirming appointments by
4 the governor, the vote, notwithstanding rule 76 (4), shall be taken by ~~secret~~ calling
5 of the ayes and noes, which shall be entered upon the journal. ^{an oral} The question of
6 adoption of a resolution confirming ^{appointment} appointment is not subject to a motion for
7 reconsideration under rule 73. The assembly may, but is not required to, act upon
8 an appointment resubmitted by the governor when the identical appointment has
9 once been refused confirmation by the assembly. The chief clerk shall record the
10 cumulative status of all appointments in the bulletin of proceedings. The assembly
11 shall inform the governor and the senate of its final action on confirmation of a
12 nomination for appointment.

13 **SECTION 2.** Assembly rule 54 (3) (h) is created to read:

14 ^{CS} Assembly Rule 54 (3) (h) An amendment to a resolution confirming a
15 nomination for appointment under rule 51m.

16 **SECTION 3.** Assembly rule 73 (1) (b) is amended to read:

17 ^{CS} Assembly Rule 73 (1) (b) May not be applied to: 1) the assembly's approval of
18 a conference committee report or of a resolution confirming a nomination for
19 appointment under rule 51m; 2) the assembly's decision on a veto; or 3) an assembly
20 action to recede from its position on a proposal so as to agree with the position of the
21 senate.

22 **SECTION 4.** Assembly rule 95 (71) is amended to read:

CS

☹

1 Assembly Rule 95 (71) RESOLUTION, ASSEMBLY: A proposal a) expressing the
2 opinion of the assembly ~~or~~; b) changing the assembly rules; or c) confirming a
3 nomination for appointment under rule 51m.

4 (END)

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2312/1dn

PJD.....
img

January 30, 2001

*ted
"elected
membership"*

I deleted from Assembly Rule 51m "and all votes related to the resolution" because it would apply to procedural votes and negative votes, such as rejection, in addition to adoption.

I deleted from Assembly Rule 51m "Adoption of the resolution requires a majority vote of the elected membership." because ~~it~~ is used in the rules only when required by the constitution. I don't believe that it is required under the constitution.

Atty. Peter J. Dykman
General Counsel
Phone: (608) 266-7098
E-mail: peter.dykman@legis.state.wi.us

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LRB-2312/1dn
PJD:kmg:ch

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General Counsel
Phone: (608) 266-7098
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is introduced

request
new

2001 ASSEMBLY RESOLUTION

assembly committee on organization shall introduce a resolution, stating that it is the request of the governor, to confirm the appointment. The

2 pm

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9 speaker deems to be the most appropriate committee to pass upon the qualifications
10 of the candidate. The committee shall report its findings and recommendations to
11 the assembly in writing. Nominations by the governor may be considered, and the

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State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

January 31, 2001

MEMORANDUM

To: Representative Vrakas

From: Attorney Peter J. Dykman, General Counsel

Re: LRB-2312 Confirmation of gubernatorial appointments

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

 JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-7098 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.