



2009 ASSEMBLY BILL 317

June 16, 2009 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on State Affairs and Homeland Security.

1 **AN ACT** *to amend* 13.41 (3), (4) and (7), 166.05 (1) (title) and 166.05 (2); and *to*
2 **create** 13.41, 13.42, 14.38 (10m) and 166.05 (1m) of the statutes; **relating to:**
3 interim successors for legislators, meetings of the legislature and legislative
4 committees, and temporary seat of government for the legislature.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's special committee on emergency management and continuity of government. It includes provisions on: (1) emergency interim successors for legislators; (2) virtual meetings of the legislature; and (3) emergency temporary locations for the legislature.

Emergency Interim Successors

Current law provides a mechanism for appointment of emergency interim successors for the governor and a variety of state and local officers. However, current law does not provide a mechanism for appointment of emergency interim successors for legislators.

ASSEMBLY BILL 317

The bill provides that a legislator, as soon as practicable after the legislature convenes every 2 years, must file with the chief clerk for the legislator's house a list of not less than 3 nor more than 7 emergency interim successors. The list is not subject to inspection or copying under the open records law. If, during an emergency resulting from enemy action, there are more than 9 vacancies in the Senate, or more than 25 vacancies in the Assembly, interim successors named in the list are to be appointed by the presiding officer or his or her designee in the house in which the threshold has been met to fill the vacancies. An interim emergency successor is required to exercise the powers and discharge the duties of the office until the vacancy is filled through an election or the emergency has ended. All votes taken by emergency interim successors are as valid as if taken by a legislator.

Under Article IV, Section 34, of the Wisconsin Constitution, the legislature is required to provide for continuity of governmental operations in periods of emergency resulting from enemy action in the form of an attack. The special committee has recommended a constitutional amendment that requires the legislature to ensure continuity in other types of emergencies. The bill provides that if such a constitutional amendment is ratified, the presiding officer shall appoint interim successor whenever the requisite number of vacancies exists.

Virtual Meetings

The bill would permit each house of the legislature, pursuant to its rules or joint rules, to issue a notice that the house and its committees are prevented from physically meeting at the seat of government due to a disaster. If a notice is issued, the house and any committee of the house may conduct a virtual meeting and transact business using any means of communication by which all of the following occur: (1) the identity of each participating member is verified and the actions of each participating member are authenticated; (2) all participating members are able to simultaneously hear or read the comments of members recognized to speak; (3) any document that is used by a member and that is accepted by the presiding officer or chairperson is immediately transmitted to the other participating members; and (4) the public has the opportunity to monitor the proceedings, within technological limits. In order for a joint committee of the legislature to hold a virtual meeting in the manner described above, each house would have to issue a notice of emergency. Exceptions to public notice of legislative proceedings or meetings and to public access are provided where the public welfare requires secrecy, as provided in Article IV, Section 10, of the Wisconsin Constitution.

Under the bill, a virtual meeting held in accordance with these requirements would be considered to have occurred at the seat of government and all actions taken at a virtual meeting would have the same legal effect as if the members were physically present at the seat of government. For purposes of determining the presence of a quorum to conduct business, any member participating in a virtual meeting would be considered present in the same manner as if physically present at the seat of government.

The bill provides that in presiding over a virtual meeting of a house of the legislature, the presiding officer must interpret and apply all rules of proceeding of that house which presume the physical presence of members in the house's chambers at the seat of government, in a manner so as to accomplish the same purposes for which the rules were adopted. Finally, the bill states that the language authorizing virtual meetings does not limit the authority of either house to use teleconferencing for purposes of holding a committee meeting at the seat of government.

Emergency Temporary Locations

Under current law, whenever during a state of emergency it becomes imprudent, inexpedient, or impossible to conduct the affairs of state government at the state capital, the governor is required to designate an emergency temporary location for the seat of government and to take such action and issue such orders as are necessary for an orderly transition of the affairs of state government to that location. While the seat of

ASSEMBLY BILL 317

government remains at a temporary location, all official acts required by law to be performed at the seat of government are as valid and binding when performed at the temporary location as if performed at the normal location.

This bill allows the legislature, by joint rule, to provide a process for designating an emergency temporary seat of government for the legislature that is different than the location designated by the governor. Under the bill, whenever, as the result of a disaster or the imminent threat of a disaster, it becomes imprudent, inexpedient, or impossible to conduct the business of the legislature at the state capital, the legislature may meet either at the location designated by the governor or the location designated by the legislature itself. Information about this location is not subject to inspection or copying under the open records law.

1 **SECTION 1.** 13.41 of the statutes is created to read:

2 **13.41 Interim successors for legislators. (1)** A legislator, as soon as
3 practicable after the legislature convenes under s. 13.02 (1), shall file with the chief
4 clerk for the legislator's house a list of not fewer than 3 nor more than 7 interim
5 successors for the legislator and shall specify their order of succession. The legislator
6 may update the list as often as the legislator wishes.

7 **(2)** A list created under sub. (1) is not subject to inspection or copying under
8 s. 19.35 (1).

9 **(3)** If, during an emergency resulting from enemy action, there are more than
10 9 vacancies in the senate at the same time, as determined under s. 17.03, the
11 presiding officer, or his or her designee, shall appoint interim successors to fill the
12 vacancies from the list under sub. (1) for the legislators whose seats are vacant, in
13 the order of succession specified. The presiding officer may not appoint an interim
14 successor who is unwilling, unable, or ineligible under the constitution and statutes
15 to serve as a legislator.

16 **(4)** If, during an emergency resulting from enemy action, there are more than
17 25 vacancies in the assembly at the same time, as determined under s. 17.03, the
18 presiding officer, or his or her designee, shall appoint interim successors to fill the
19 vacancies from the list under sub. (1) for the legislators whose seats are vacant, in

ASSEMBLY BILL 317

1 the order of succession specified. The presiding officer may not appoint an interim
2 successor who is unwilling, unable, or ineligible under the constitution and statutes
3 to serve as a legislator.

4 (5) Interim successors appointed under sub. (3) or (4) shall take the oath of
5 office, but may not be required, as a prerequisite to the exercise of the powers or
6 discharge of the duties of a legislator, to comply with any other provision of law
7 relative to taking office.

8 (6) The chief clerk of each house, or if he or she is unavailable, his or her deputy,
9 shall notify the secretary of state of all vacancies that are filled by interim successors
10 under this section.

11 (7) An interim successor taking office under this section shall exercise the
12 powers and discharge the duties of the office until the vacancy is filled under s. 17.19
13 or the emergency resulting from enemy action has ended. All votes taken by an
14 interim successor shall be as valid as if taken by an elected legislator.

15 **SECTION 2.** 13.41 (3), (4) and (7) of the statutes, as created by 2009 Wisconsin
16 Act (this act), are amended to read:

17 13.41 (3) ~~If, during an emergency resulting from enemy action,~~ there are more
18 than 9 vacancies in the senate at the same time, as determined under s. 17.03, the
19 presiding officer, or his or her designee, shall appoint interim successors to fill the
20 vacancies from the list under sub. (1) for the legislators whose seats are vacant, in
21 the order of succession specified. The presiding officer may not appoint an interim
22 successor who is unwilling, unable, or ineligible under the constitution and statutes
23 to serve as a legislator.

24 (4) ~~If, during an emergency resulting from enemy action,~~ there are more than
25 25 vacancies in the assembly at the same time, as determined under s. 17.03, the

ASSEMBLY BILL 317

1 presiding officer, or his or her designee, shall appoint interim successors to fill the
2 vacancies from the list under sub. (1) for the legislators whose seats are vacant, in
3 the order of succession specified. The presiding officer may not appoint an interim
4 successor who is unwilling, unable, or ineligible under the constitution and statutes
5 to serve as a legislator.

6 **(7)** An interim successor taking office under this section shall exercise the
7 powers and discharge the duties of the office until the vacancy is filled under s. 17.19
8 ~~or the emergency resulting from enemy action has ended.~~ All votes taken by an
9 interim successor shall be as valid as if taken by an elected legislator.

10 **SECTION 3.** 13.42 of the statutes is created to read:

11 **13.42 Virtual meetings of the legislature and legislative committees.**

12 **(1)** In this section:

13 (a) “Disaster” means a severe or prolonged, natural or human-caused,
14 occurrence that threatens or negatively impacts life, health, property,
15 infrastructure, the environment, the security of this state or a portion of this state,
16 or critical systems, including computer, telecommunications, or agricultural
17 systems.

18 (b) “Member” means a member of the legislature.

19 **(2)** Either house of the legislature, under its rules or joint rules, may issue a
20 notice that the house and its committees are prevented from physically meeting at
21 the seat of government due to an emergency resulting from a disaster or the
22 imminent threat of a disaster.

23 **(3)** If a house issues a notice under sub. (2), that house and any committee of
24 that house may conduct a meeting and transact business through the use of any
25 means of communication by which all of the following occur:

ASSEMBLY BILL 317

1 (a) The identity of each participating member may be verified, and the actions
2 of each participating member may be authenticated, in a manner satisfactory to the
3 presiding officer or committee chairperson.

4 (b) During the meeting, all participating members may simultaneously hear
5 or read the comments of each member who is recognized by the presiding officer or
6 committee chairperson.

7 (c) Any document that is used during the meeting by a member and that is
8 accepted by the presiding officer or committee chairperson is immediately
9 transmitted to each participating member.

10 (d) Except as provided in sub. (8), within technological limits, the public may
11 monitor the proceedings of the house or committee.

12 **(4)** In order to hold a meeting of a joint committee in the manner provided
13 under sub. (3), each house of the legislature shall issue a notice of emergency under
14 sub. (2).

15 **(5)** For purposes of article IV, section 11, of the Wisconsin Constitution, a
16 meeting held under sub. (3) or (10) shall be considered to have occurred at the seat
17 of government and all actions taken during the meeting shall have the same legal
18 effect as if the members were physically present at the seat of government.

19 **(6)** For purposes of determining the presence of a quorum in proceedings or
20 meetings held under this section, any participating member shall be considered
21 present as if the member were physically present at the seat of government.

22 **(7)** Except as provided in sub. (8), a meeting held under sub. (3) or (10) shall
23 be preceded by the same or substantially equivalent public notice as would be
24 required if the members were physically present at the seat of government.

ASSEMBLY BILL 317

1 **(8)** Subsections (3) (d) and (7) do not apply with respect to a meeting held under
2 sub. (3), if pursuant to article IV, section 10, of the Wisconsin Constitution, the public
3 welfare requires secrecy.

4 **(9)** In presiding over a meeting of a house of the legislature described under
5 sub. (3) or (10), the presiding officer shall interpret and apply all rules of proceeding
6 of that house that presume the physical presence of members in the house's
7 chambers at the seat of government, in such a manner as to accomplish the same
8 purposes for which the rules were adopted.

9 **(10)** Notwithstanding the requirement for a notice of emergency under sub. (2),
10 and pursuant to the session schedule under s. 13.02 (3), the legislature may meet for
11 up to one week per session by holding a meeting as described under sub. (3) in order
12 to practice meeting in that manner.

13 **(11)** This section does not limit the authority of either house of the legislature
14 to use teleconferencing for purposes of holding a committee meeting at the seat of
15 government.

16 **SECTION 4.** 14.38 (10m) of the statutes is created to read:

17 **14.38 (10m)** NOTIFICATION OF CONSTITUTIONAL AMENDMENT. If an amendment to
18 the Wisconsin Constitution is approved that requires the legislature to provide for
19 temporary succession to the powers and duties of public offices for the period of an
20 emergency resulting from a cause other than an enemy action, within 30 days after
21 the government accountability board records the approval under s. 7.70 (3) (h), notify
22 the legislature that the amendment has been approved.

23 **SECTION 5.** 166.05 (1) (title) of the statutes is amended to read:

24 **166.05 (1)** (title) DESIGNATION OF EMERGENCY TEMPORARY LOCATION BY THE
25 GOVERNOR.

ASSEMBLY BILL 317

1 **SECTION 6.** 166.05 (1m) of the statutes is created to read:

2 **166.05 (1m) DESIGNATION OF TEMPORARY LOCATION BY THE LEGISLATURE.** (a) The
3 legislature, by joint rule, may provide a process for designating a temporary seat of
4 government for the legislature that is different than the location under sub. (1).

5 (b) Whenever, as the result of a disaster, as defined in s. 13.42 (1) (a), or the
6 imminent threat of a disaster, it becomes imprudent, inexpedient, or impossible to
7 conduct the business of the legislature at the state capital, the legislature may meet
8 at the temporary location designated as provided under par. (a) or sub. (1) until it is
9 no longer, as a result of the disaster or imminent threat of disaster, imprudent,
10 inexpedient, or impossible, to conduct the business of the legislature at the state
11 capital.

12 (c) Pursuant to the session schedule under s. 13.02 (3), the legislature may meet
13 for up to one week per session in a location that is not the state capital or the
14 temporary location designated as provided under par. (a) or sub. (1) to practice
15 meeting at a temporary location.

16 (d) Information about the temporary location designated as provided under
17 par. (a) is not subject to inspection or copying under s. 19.35 (1).

18 **SECTION 7.** 166.05 (2) of the statutes is amended to read:

19 **166.05 (2) EXERCISE OF GOVERNMENTAL AUTHORITY.** While the seat of government
20 remains at such a temporary location all official acts required by law to be performed
21 at the seat of government by any officer, independent agency, department, or
22 authority of this state, including the convening and meeting of the legislature in
23 regular or special session under sub. (1) or (1m) (b) or (c), shall be as valid and binding
24 when performed at such ~~emergency~~ the temporary location as if performed at the
25 normal location.

