

1969 Assembly Bill 1003

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CHAPTER 422, LAWS OF 1969

AN ACT to create 14.011 (2), 14.015, 17.025, 20.525 (1) (e) and 20.924 of the statutes, relating to creating a disability board, filling temporary vacancies in elective offices, and making an appropriation.

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

SECTION 1. STATEMENT OF PURPOSE. It is the purpose of this act to provide for the continuity of Wisconsin state government and to insure its citizens of their constitutional right to a voice in its conduct through their representatives by providing a means whereby any elected official who may become temporarily incapacitated during his term of office may be relieved of his office on an interim basis through a finding of incapacity by the disability board herein created, and the appointment of an interim successor selected in accordance with law.

SECTION 2. 14.011 (2) of the statutes is created to read:

14.011 (2) DISABILITY BOARD. The disability board shall have the program responsibilities specified for the board under s. 17.025.

SECTION 3. 14.015 of the statutes is created to read:

14.015 SAME; ATTACHED BOARDS AND COMMISSIONS. (1) DISABILITY BOARD. There is created a disability board which is attached to the executive office under s. 15.03. Where not in conflict with s. 17.025,

s. 15.07 applies to the disability board. The disability board shall consist of the governor, the chief justice of the supreme court, the speaker of the assembly, the president pro tempore of the senate, the minority leader of the assembly, the minority leader of the senate, and the dean of the university of Wisconsin medical school. In case of the absence or disability of any of the aforementioned members to serve for a particular meeting of the board, the lieutenant governor, a justice of the supreme court designated by the chief justice, the speaker pro tempore of the assembly, the majority leader of the senate, the assistant minority leader of the assembly, the assistant minority leader of the senate, or an associate dean of the university of Wisconsin medical school designated by the dean shall serve, respectively, in place of the aforementioned officers.

SECTION 4. 17.025 of the statutes is created to read:

17.025 TEMPORARY VACANCIES. (1) EXISTENCE. Whenever the duly qualified incumbent of an office enumerated in sub. (4) is found to be unable to perform all of the functions of his position by incapacitation caused by illness or injury of any nature, a temporary vacancy exists.

(2) HOW CONVENED. (a) *Voluntary petition.* Whenever the incumbent of an office enumerated in sub. (4), or his duly appointed guardian, files a written petition for a hearing to determine his incapacitation with any member of the board requesting a hearing, the disability board shall be convened within 5 days from the date of filing said petition.

(b) *Involuntary petition.* Whenever a written petition duly signed by any 4 members of the disability board is filed with the board requesting a hearing to determine the incapacitation of the incumbent of an office enumerated in sub. (4), the board shall be convened within 5 days from the date of filing said petition. The petition shall be signed by at least one member of each of the political parties represented on the board.

(3) HEARING. (a) *When held.* Whenever the disability board has been convened it shall conduct a hearing to determine whether a temporary vacancy exists.

(b) *Proceedings.* In the conduct of the hearing any member of the board shall have the right to administer oaths, to summon and compel attendance of witnesses, and to sign and issue a subpoena. The board shall keep a record of its proceedings and a phonographic transcript shall be taken, made a part of the files and transcribed only by order of the board. The files and records of the board in proceedings under this section shall be kept in locked files and shall not be open to inspection except upon specific permission of the board. In any action or special proceeding in a court of record, such files and records shall be made available by special order of such court.

(c) *Quorum.* A quorum shall consist of six members. Findings shall be effective only by a secret affirmative vote of six members of the disability board. Said findings shall be final without right of appeal, except that after a finding of disability or inability to act, the affected incumbent may appeal such finding pursuant to ch. 227. The appeal shall be limited to the board record. The finding of disability or inability to act shall remain in effect during the pendency of such appeal.

(d) *Findings.* After a hearing by the disability board and a finding of disability or inability to act has been filed, a written certificate of temporary incapacity signed and authorized by the board members shall be filed in the office of the secretary of state not later than the next succeeding legal work day and when so filed shall create a temporary vacancy in such affected elected office. In the event of a finding of no disability by failure to secure 6 affirmative votes in support of the petition, the board shall dismiss the petition.

(e) *Rehearing.* The disability board shall conduct rehearings in accordance with pars. (b) and (c). A rehearing before the disability board to reconsider an existing finding of temporary incapacitation shall be held when petitioned as provided in sub. (2), but no such rehearing shall be held unless 3 months have elapsed from the date of the conclusion of the original hearing or the most recent rehearing. When the existing finding of disability or inability to act was made pursuant to a voluntary petition under sub. (2) (a) and more than 3 months have elapsed since such finding, such affected incumbent may file a declaration of fitness. Upon the filing of such declaration the board may reconvene on call of any member and conduct a rehearing to determine such incumbent's ability to serve. Failure to reconvene the board within 15 days from the date of filing of such declaration shall result in voiding the finding of disability or inability to act, and restore the incumbent to office.

(f) *Removal of disability.* After a board rehearing and a finding of a removal of the disability and, therefore an ability to act, a written certificate of such finding shall be signed and authorized by the board members and shall be filed in the office of the secretary of state not later than the next succeeding legal work day and when so filed shall rescind the previously filed certificate of temporary incapacity. At such time the regularly elected incumbent shall resume his office.

(4) **AFFECTED OFFICES AND HOW FILLED DURING DISABILITY.** Whenever the board has made a finding that a temporary vacancy exists in the following offices, such office shall be filled for the period of such temporary vacancy or the balance of the unexpired term, whichever is the shorter period, as follows:

(a) *Governor.* When the temporary vacancy exists in the office of governor, the duties of the governor shall automatically be assumed by the lieutenant governor as required by article V, section 7 of the constitution.

(b) *Lieutenant governor.* When the temporary vacancy exists in the office of lieutenant governor during the continuance of a vacancy in the office of governor, the duties of the office of governor shall be assumed by the secretary of state as required by article V, section 8, of the constitution.

(c) *Secretary of state; state treasurer.* When the temporary vacancy exists in the office of secretary of state or in the office of state treasurer, the duties of the office shall be assumed, respectively, by the first emergency interim successor designated under s. 22.166 (4) or, if no such designation has been made for the respective office, then by a deputy appointed by the governor.

(d) *Attorney general; state superintendent.* When the temporary vacancy exists in the office of attorney general or in the office of state superintendent of public instruction, the duties of the office shall be assumed, respectively, by the deputy under s. 15.05 (2) or, if such office is vacant, by a deputy appointed by the governor.

(e) *Supreme court.* When the temporary vacancy exists in the office of supreme court justice, the duties of the office shall be assumed by an acting justice appointed by the governor, but if such vacancy exists in the office of chief justice, the justice who would succeed to the office of chief justice if the vacancy were permanent shall assume the duties of chief justice for the period of the temporary vacancy and the acting justice appointed by the governor shall assume the duties of an associate justice.

(f) *Circuit court.* When the temporary vacancy exists in the office of circuit court judge, the duties of the office shall be assumed by a reserve judge appointed under article VII, section 24 of the constitution, but if no such reserve judge is available, the duties of the office shall be assumed by an acting circuit court judge appointed by the governor.

SECTION 5. 20.525 (1) (e) of the statutes is created to read:

20.525 (1) (e) *Disability board*. Such sums as are necessary for 1) the disability board to make payment for the service of process or other papers, certified copies of papers and records, standard witness fees and expert witness fees, and 2) to supplement existing appropriations for the purpose of making the compensation payments required under s. 20.924.

SECTION 6. 20.924 of the statutes is created to read:

20.924 SALARY OF TEMPORARY SUCCESSORS. Whenever a temporary vacancy has been found to exist under s. 17.025 and the certificate of temporary incapacity filed in the office of the secretary of state remains in effect, the affected incumbent shall continue to be entitled to receive his full salary, and employer-paid fringe benefits, during the period of such temporary vacancy but not beyond the expiration of his term. The person selected or qualified under s. 17.025 (4) to replace the incumbent during the temporary vacancy shall be reimbursed for the actual and necessary expenses incurred in the performance of his duties as temporary successor and shall as compensation for his services be entitled to receive a sum equal to the amount of salary the disabled incumbent receives during the temporary vacancy, but if the person serving as temporary successor is already a salaried officer or employe of the state, the amount payable to him, in addition to his regular salary, shall be the difference between his regular salary and the salary of the incumbent in the position in which the temporary vacancy exists. Nothing in this section shall authorize a reduction in the salary of a state officer or employe appointed to fill a temporary vacancy.

SECTION 7. RECONCILIATION. Sections 2 and 3 of this act create sections 14.011 (2) and 14.015 of the statutes to fit into the renumbered structure of chapter 14 of the statutes resulting from the enactment of chapter , laws of 1969 (Senate Bill 355). Should said senate bill fail to be enacted, the revisor shall delete the headings of the 2 units and shall print them as 14.095 (2) and 14.095 (1), respectively. [See Section 620 of Chapter 276, Laws of 1969]

Approved February 11, 1970.
