



LEGISLATIVE REFERENCE BUREAU

Amending the Wisconsin State Assembly Rules: 2019 Assembly Resolutions 12 and 13

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On October 10, 2019, the Wisconsin State Assembly adopted two resolutions to amend the assembly rules: 2019 Assembly Resolutions 12 and 13. The Legislative Reference Bureau has been asked by several offices, the press, and members of the public to summarize and explain the rule changes. In light of the interest in these rule changes, this issue of *LRB Reports* provides a summary of these important changes to the assembly rules.¹

Assembly Resolution 12

On October 8, 2019, the Wisconsin Assembly Committee on Rules introduced Assembly Resolution 12, and on October 10, 2019, Majority Leader Jim Steineke introduced Assembly Amendments 1 and 2 to Assembly Resolution 12, and the Assembly adopted the resolution, as amended, by a vote of 61 to 35. The resolution amends the assembly rules to do all of the following:

Committee meetings

Under the previous assembly rules, a member could not participate in committee meetings and be considered present if the member was not physically present in the room where the committee was meeting.² Members could not ask questions, make comments, offer amendments, or vote if they were not in the room. The rules did allow an absent member to vote after a committee adjourned if the member returned to the committee room and voted in that room within 30 minutes after the committee adjourned.³ This often occurred when the member was attending two committee meetings at the same time and was unable to be in the room at the time a vote was taken. The rules also exempted the Committee on Assembly Organization from this prohibition in order that members of this leadership committee could vote by ballot.⁴

Assembly Resolution 12 creates a process whereby certain members can participate in committee meetings without being physically present in the room where the committee is meeting.⁵ Under the new process, a member can participate in committee proceedings by telephone or by other means of telecommunication or electronic communication. The member can participate fully at committee hearings and executive sessions and will be considered present for all official committee business even if the member is not physically present in the room.

1. An excellent and well-researched account of Assembly Resolution 12 before its adoption on October 10, 2019, can be found on the *Wheeler Report* at <http://www.thewheelerreport.com/blog/2019/10/10/assembly-legislative-procedures/>.

2. Assemb. Rule 11 (4).

3. Assemb. Rule 11 (5) (a).

4. Assemb. Rule 11 (4); Assemb. Rule 23 (1m).

5. Assemb. Rule 11 (12), as created by 2019 Wis. AR 12.

In order for a member to participate remotely at committee meetings, several things must occur. First, the member must have contacted the legislature's human resources office and presented to that office written documentation that demonstrates the member has a permanent disability and the member is unable to attend committee meetings on a regular basis. There is no deadline for when the member must contact the human resources office. The new rule does not specify what type of written documentation must be provided, nor does the rule specify the kinds of disability that must be demonstrated. The only requirements are that the documentation must be in writing and must show that the member's disability is permanent and prevents the member from regularly attending committee meetings. This must be done each biennial legislative session.

Second, the human resources office must certify in writing that the member has a permanent disability and is unable to attend committee meetings on a regular basis. A copy of this written certification must be provided to the speaker and the minority leader. The rules do not require the human resources office to identify the member's disability, nor do they require the human resources office to specify the reasons the member cannot regularly attend committee meetings. The new rules simply require the human resources office to certify that the member has a permanent disability and cannot attend committee meetings on a regular basis.

Third, after receiving the written certification from the human resources office, the speaker and the minority leader must specifically authorize the member to participate in committee meetings by telephone or by other means of telecommunication or electronic communication. The new rules do not specify the exact form of the authorization. But an authorization signed by the speaker and the minority leader, a copy of which is distributed to committee chairpersons or even entered on the assembly journal, would certainly satisfy the requirement. This must be done each biennial legislative session.

Finally, the new rules provide that the member must notify the committee chairperson and the sergeant at arms at least 30 minutes before the scheduled start of a committee meeting that the member will participate remotely at the committee meeting. During the debate of Assembly Resolution 12, the majority leader indicated that the 30-minute notification requirement is to provide time for the sergeant at arms to prepare the committee meeting rooms for the member to participate in committee proceedings.

If all of these steps occur, a member may participate in all phases of committee meetings, including voting, without being physically present in the room where the committee is meeting. The member will be recorded as present for all committee meeting purposes.

Debate time limits

Beginning at the start of the 2013–14 legislative session and continuing into the 2017–18 legislative session, the assembly majority and minority party leaders entered into a mem-

orandum of understanding (MOU) in which, among other things, floor debate times were set by negotiation.⁶ The party leaders were required by rule to negotiate floor debate time limits and the Committee on Rules had to include the time limits in its recommendations for the floor calendar.⁷ The time limits set the number of hours for floor debate on each session day, and sometimes included time limits for debate on individual proposals. But time limits for debate on specific proposals was the exception. An MOU for the 2019–20 legislative session, as of October 2019, has not yet been established.

Assembly Resolution 12 amends the assembly rules to require the majority leader and the minority leader to adopt reasonable recommendations for time limits and schedules for each proposal on the daily calendar.⁸ The previous version of the rules did not require debate time limits for each proposal, but only for floor debate in general, which could have included limits for each proposal. Under the new process, if the party leaders reach agreement, the Committee on Rules must include the negotiated floor debate time limits in its recommendations for the floor calendar. If the party leaders do not reach agreement, the Committee on Rules must establish its own time limits and schedules for floor debate for each proposal.

It is important to note that under current assembly rules, once the time limit has been reached for a given proposal, a member may move that all pending amendments to the proposal are to be tabled en masse and the main question to which the proposal relates voted on immediately.⁹ In other words, once a time limit for debate on a proposal has expired, a member may move to end debate on the proposal and require an immediate vote on the question to which the proposal relates. No additional amendments may be offered. Assembly Resolution 12 does not change this rule.

Dilatory motions

The assembly rules allow the presiding officer to declare any motion or procedure dilatory if it appears to the officer that the motion or procedure is being used for the purpose of delay.¹⁰ Under general parliamentary procedures, the power of the presiding officer to find certain actions dilatory is to ensure that legislative proceedings are not excessively

6. Copies of the MOUs and a discussion of the MOUs on assembly proceedings can be found in Richard A. Champagne, Emma J. Gadian, and Madeline R. Kasper, “Organizing the Wisconsin State Assembly: The Role of Memoranda of Understanding,” *Journal of the American Society of Legislative Clerks and Secretaries* 23 (Fall 2017), 4–14, http://www.ncsl.org/Portals/1/Documents/aslcs/2017completeProfessionalJournal_245.pdf. Also, see Richard A. Champagne and Madeline Kasper, “Organizing the Wisconsin State Assembly: The Role of Memoranda of Understanding—An Update,” *LRB Reports* 2, no. 7 (Madison, WI: Legislative Reference Bureau, July 2018), https://docs.legis.wisconsin.gov/misc/lrb/lrb_reports/lrb_reports_2_7.pdf.

7. Assemb. Rule 55m (1).

8. Assemb. Rule 55m (1), as amended by 2019 Wis. AR 12.

9. Assemb. Rule 71m.

10. Assemb. Rule 69.

delayed or brought to a standstill by a minority of members.¹¹ In practice, this power is rarely used. For most of a typical legislative day, the presiding officer in the assembly is the speaker pro tempore. Assembly Resolution 12 specifies that a motion to recess for partisan caucus is one of the covered motions or procedures that the presiding officer may find dilatory.¹² Current assembly rules may already allow the presiding officer to do this, but this rule change makes clear that a request or motion to recess for partisan caucus could in certain instances be found dilatory.

Call of the assembly

A call of the assembly is a procedure to compel absent members to return to the assembly floor on a session day. Typically, absent members are in assembly offices or in the assembly parlor, momentarily away from their desks. Any member may request the presiding officer to issue a call of the assembly and, under assembly rules, the presiding officer must order a call if at least 15 other members second the request.¹³ Assembly Resolution 12 amends the rules to give the presiding officer the power to issue a call of the assembly on his or her own initiative without any members seconding the call.¹⁴ The change will permit the presiding officer, at any time, to compel absent members to return to their desks on the assembly floor.

The daily calendar

The assembly rules lay out the daily calendar by orders of business.¹⁵ Orders of business establish when matters are available for assembly consideration during a floor day and thereby provide some predictability to the session day. The previous rules required that assembly resolutions and senate resolutions were to be taken up before debate began on assembly bills and senate bills. Assembly Resolution 12 amends the rules to place assembly consideration of all resolutions after consideration of assembly bills and senate bills, as well as after the order of business that permits motions to be made from the floor. A similar change was made in the senate in May 2019.¹⁶ The practical result of this rule change is that assembly consideration of resolutions will now occur toward the end of the floor day, not at the outset of the floor day. However, the rules were further amended to allow for resolutions to be considered earlier in the day by a majority vote.¹⁷ This change

11. See *Mason's Manual of Legislative Procedure* (Denver, CO: NCSL, 2010), sec. 180 (1), which states "Every legislative body has an inherent right to protect itself from dilatory motions."

12. This change appears in newly amended Assemb. Rule 69 (1).

13. Assemb. Rule 83.

14. Assemb. Rule 83 (2m), as created by 2019 Wis. AR 12.

15. Assemb. Rule 31.

16. 2019 Wis. SR 4.

17. Assemb. Rule 32 (3m), as created by 2019 Wis. AR 12.

will allow the assembly to act on resolutions at any point during a floor day, such as when guests are invited onto the assembly floor at a specific time for recognition and the resolutions relate to a matter affecting the guests.

Withdrawing proposals from committee

Previous assembly rules provided that while the assembly was on the floor a member could offer a motion to withdraw a proposal from committee only on the first day in a week on which a roll call was taken.¹⁸ Also, the motion could be made only at the end of the floor day during that order of business set aside for motions. Assembly Resolution 12 amends the assembly rules to include not only motions to withdraw proposals from committee, but also unanimous consent requests and motions to suspend the rules to withdraw proposals from committee.¹⁹ Under the new rules, all attempts to withdraw proposals from committee, regardless of how a member makes the attempt, must be made during that one order of business on that one day in any week. Any other attempt by a member to withdraw a proposal from committee on another floor day during that week is out of order.

Motion to return a proposal to second-reading stage

Previous assembly rules did not permit a proposal to be returned to its amendable stage at second reading once the proposal had been given its third reading. Under assembly rules, once a proposal is beyond the second-reading stage, it is no longer subject to amendment. In the past, if there were reasons to return a bill to its amendable stage, this could be accomplished only by unanimous consent of the body or by a suspension of the rules. If this occurred, the record was expunged, the proposal was then subject to further amendment, and the question of whether the bill should be given its third reading was voted on again. Assembly Resolution 12 allows a member to move that a bill be returned to its amendable stage without unanimous consent or a suspension of the rules. Any motion is nondebatable and need only be approved by a majority of members.²⁰

Assembly Resolution 13

On October 10, 2019, Speaker Robin Vos and Majority Leader Jim Steineke introduced Assembly Resolution 13, and the assembly adopted the resolution by a vote of 60 to 36. Assembly Resolution 13 consists entirely of those provisions in Assembly Resolution 12 that were removed by Assembly Amendment 2 to Assembly Resolution 12. The resolution amends the assembly rules to do all of the following:

18. Assemb. Rule 15 (2).

19. This rules change incorporates into the assembly rules a practice that has been common in the senate since 2000. See Wis. S. Journal (February 1, 2000), 413.

20. Assemb. Rule 67, as amended by 2019 Wis. AR 12; Assemb. Rule 73m, as created by 2019 Wis. AR 12.

Reconsideration of assembly overrides of governor vetoes

Reconsideration is a legislative procedure that permits the assembly to reconsider its decisions, including its vote on proposals. There can be many reasons for reconsideration: members may change their minds on the merits of a proposal or they may receive new information that causes a decision or a vote on a proposal to be taken anew. The time frame for reconsideration of legislative decisions is very short, usually the next legislative day at most depending on the type of assembly decision.²¹ Previous assembly rules prohibited reconsideration of an assembly vote on an override of a governor's veto of a proposal.²² The assembly could try only once to override a governor's veto of a proposal.

Assembly Resolution 13 amends the rules to allow reconsideration of votes to override a governor's veto of a proposal but only if the override vote failed.²³ Under the new rules, reconsideration of a veto override may be taken any number of times during the biennial legislative session on any floor day at which a quorum is present and at any time during a floor day.²⁴ The assembly and the senate currently have the power to recall proposals from the other house and reconsider its vote on legislation before the legislation is presented to the governor for signature; the legislature also has the power to recall legislation from the governor after its presentment to the governor by adopting a joint resolution.²⁵ The ability of the assembly under the new rules to take multiple override votes of a governor's veto is a novel legislative procedure, at least in Wisconsin. *Mason's Manual of Legislative Procedure*, however, does recognize the right of a legislative body to reconsider a veto override vote, asserting "It is permissible to reconsider a vote refusing to pass a bill over the executive veto."²⁶

Referral of proposals to calendar

Previous assembly rules allowed the speaker to withdraw a proposal from a standing committee and directly refer the proposal to the calendar for the second legislative day thereafter.²⁷ Typically, most floor periods during the biennial legislative session begin on a Tuesday and end on a Thursday. The first legislative day of a week is therefore most often a Tuesday. The assembly regularly conducts its floor days on Tuesdays and, rarely, on Wednesdays. If the speaker wished to withdraw a proposal from committee and directly refer it to the calendar, the speaker could usually not refer the proposal to a Tuesday

21. Assemb. Rule 73 (2) and (3).

22. Assemb. Rule 73 (1) (b).

23. Assemb. Rule 73 (1) (a), as amended by 2019 Wis. AR 13.

24. Assemb. Rule 73 (3m), as created by 2019 Wis. AR 13.

25. Joint Rules 5 and 6.

26. *Mason's Manual of Legislative Procedure*, sec. 755 (1). Also, see sec. 458. Assembly Rule 91 (2) provides that *Mason's Manual* may be used in the interpretation of assembly rules.

27. Assemb. Rule 42 (3) (c).

calendar, because that was the first legislative day of the week. Thus, proposals could be withdrawn only from committee and directly referred to a Tuesday calendar with unanimous consent.

Assembly Resolution 13 provides that the Monday before a scheduled floorperiod is to be counted as the first legislative day for purposes of withdrawing a proposal from committee and directly referring the proposal to the calendar.²⁸ In this way, if Monday is counted as the first legislative day, the speaker could withdraw a proposal from committee, say on a Thursday or Friday, and refer the proposal directly to the next Tuesday calendar because that Tuesday would be considered the second legislative day.

Definition of “assembly chamber”

Previous assembly rules included the majority leader’s office in the definition of “assembly chamber.”²⁹ This was accurate before the 2013–14 legislative session. Before that session, the majority leader’s office was located adjacent to the speaker’s office just off the assembly floor. During the 2013–14 legislative session, however, the majority leader’s office was moved to its current location at 115 West. The majority leader’s office is no longer just outside the assembly floor and within the confines of what is considered the assembly chamber. Assembly Resolution 13 acknowledges the relocation of the majority leader’s office in 2013 and removes it from the rule definition of “assembly chamber.” ■

28. Assemb. Rule 42 (3) (c), as amended by 2019 Wis. AR 13.

29. Assemb. Rule 95 (6).