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# ROBERT BROOKS

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STATE REPRESENTATIVE • 60<sup>TH</sup> ASSEMBLY DISTRICT

**Hearing Testimony**  
**Assembly Committee on Campaigns and Elections**  
**September 10, 2019**

Chairman Tusler and members of the Assembly Committee on Campaigns and Elections, thank you for affording me with the opportunity to testify on behalf of Assembly Bill 89.

Assembly Bill 89 was drafted at the behest of a local municipality and clarifies state statute as it relates to filling vacancies in elected offices at the city and village. An individual from the aforementioned municipality will testify later and provide a first-hand case study as to why this bill is necessary. Currently, state statutes are convoluted and difficult for readers—including elected officials—to comprehend.

This legislation, in addition to making the statute easier to understand, applies the same procedures for filling vacancies to villages as cities. There is a lack of uniformity in the current process for filling vacated offices in those jurisdictions. Assembly Bill 108 makes important formatting changes to statutes regarding the filling of vacancies in city and village elected offices and expressly allows a city or village office to remain vacant until an election is held. While Assembly Bill 89 reorganizes statutory provisions—an attempt to make the language more fluid—it maintains current law specifying when a special election to fill a vacancy in a city or village office may be held.

For example, under current law and Assembly Bill 89, if a vacancy in the office of alderperson in a 2<sup>nd</sup>, 3<sup>rd</sup>, or 4<sup>th</sup> class city happens no later than December 1 preceding the spring election, the city must hold a special election concurrently with the spring election.

To alleviate concerns brought forth by several municipalities, Senator Stroebel and I drafted a substitute amendment designed to provide flexibility to municipalities, as it relates to filling vacancies. Assembly Substitute Amendment 1 provides that a vacancy in a city or village office may be:

1. Filled by appointment for the rest of the unexpired term
2. Filled by the appointment until a special election is held, as ordered by the city council or village board



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3. May remain vacant until an election is held.

The substitute amendment eliminates current law specifying particular timelines for holding a special election for city or village office. This provides cities and villages with the ability to fill vacancies in a manner that is most suitable for them.

We worked closely with the League of Wisconsin Municipalities, City of Milwaukee, and Wisconsin Elections Commission on this legislation, particularly the substitute amendment.

I am happy to answer any questions you might have.



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To: Assembly Committee on Campaigns and Elections  
From: Curt Witynski, J.D., Deputy Executive Director, League of Wisconsin Municipalities  
Date: September 10, 2019  
**Re: AB 89, Process for filling vacancies in city and village elective offices**

The League of Wisconsin Municipalities supports the substitute amendment to AB 89. We worked closely with the authors to modernize and simplify the statutory language governing the process for filling vacancies in city and village elective offices. The current statute is confusing and difficult to read and apply.

Assembly Substitute Amendment 1 provides that a vacancy in a city or village office may be:

1. Filled by appointment for the rest of the unexpired term
2. Filled by the appointment until a special election is held, as ordered by the city council or village board
3. May remain vacant until an election is held.

The substitute amendment eliminates current law language specifying deadlines and timing requirements for holding a special election to fill a vacancy. The substitute amendment provides cities and villages with the ability to fill vacancies in a manner that makes the most sense for their community.

We urge you to recommend passage of the substitute amendment to AB 89. Thanks for considering our comments.

**Testimony of Meagan Wolfe**  
**Administrator**  
**Wisconsin Elections Commission**

**Assembly Committee on Campaigns and Elections**  
**September 10, 2019**

**Room 300 Northeast, State Capitol**  
**Public Hearing**

Chairperson Tusler and Committee Members:

Thank you for the invitation to provide testimony on behalf of the Wisconsin Elections Commission (WEC) regarding the three bills up for a hearing today. I am providing written testimony for information only regarding Assembly Bills 89 and 244, and in will be testifying in support of Assembly Bill 342 which addresses items identified in the legislative agenda adopted by the Commission.

**Assembly Bill 89**

2019 Senate Bill 108 attempts to simplify and clarify statutory provisions related to filling vacancies in city and village offices. Local clerks and municipal attorneys often ask the Commission to help determine when a special election is to be held. The Substitute Amendment addresses some questions and issues we raised in testimony regarding the Senate version of the bill. We appreciate the author's efforts to consider the input of our office to clarify the current statutory language which can be a bit challenging to follow.

Current statutes list several default dates for a special election to be called by a city's common council depending upon when a vacancy occurs. Historically those dates have been interpreted as only suggested dates because Wis. Stat. § 17.23(1)(a) includes the phrase "Unless otherwise ordered by the common council..." The bill eliminates the suggested default dates to clarify the flexibility which already exists in the statutes to set special election dates in cities, and also clarifies that villages have the same flexibility.

As a result, the bill would permit cities and villages to schedule a special election for local office simply by complying with the notice provisions of Wis. Stat. § 8.50. For all cases, Wis. Stat. § 8.50 states that no special election may be held after February 1 until the date of Spring Election, nor after August 1 until the General Election. An order for a special election must be issued between 62 and 77 days of the special election date if it is not held on the same date as a regularly-scheduled election. If a special election is to

held on the same date as the Spring Election, it must be ordered between 49 and 92 days before the Spring Primary. And if the special election is to be held on the same date as the General Election, it must be ordered between 92 and 122 days prior to the Partisan Primary. Those schedules are designed to accommodate the timeline for preparing ballots and complying with federal law related to ballots for federal offices on the ballot.

The bill also clarifies that city councils and village boards have the option to appoint an individual to fill a vacancy for the remainder of the term or to leave the office vacant until an election is held. This has been our interpretation of the law because of the use of the term "may" in several sections of the statute, but it is helpful that the original bill and the Substitute Amendment specifically authorize each option.

While the Elections Commission has not reviewed or weighed in on AB 89, the consensus of Commission staff is that, while it will retain the substance of current law, the Substitute Amendment will reduce confusion for local clerks in scheduling special elections, and will therefore assist our efforts in training local election officials.

#### **Assembly Bill 244**

Wis. Stat. § 6.34 currently allows 13 documents or types of documents that an individual may use as proof of their residence when registering to vote, including a driver license or State ID, property tax bill, lease, bank statement, paycheck or official identification card issued by an employer which contains a photograph. The proof of residence document is required during the voter registration process, which is different from the photo ID requirement to obtain a ballot. The common element of proof of residence documents is that they must include the individual's current name and current address.

AB 244 would add a W-2 form for the current or preceding year as a document that could be used as a valid proof of residence document. Because W-2 forms are issued by the employers and are used as part of the income tax filing process, they would seem to provide comparable evidence of an individual's residence as other documents that are currently acceptable.

#### **Assembly Bill 342**

The Elections Commission adopted the proposed changes in Assembly Bill 342 as part of its legislative agenda earlier this year and so I am testifying in support of that bill.

Following the completion of the official canvass at the local, county, and state levels, the appropriate filing officer issues a certificate of election to the winning candidates. Whether at the municipal, county or state level, the filing officer currently may not issue the certificate of election until the expiration of the time for filing a recount, which is three days after the official canvass is completed. When a recount petition is filed, the

certificate of election is not issued until the completion of the recount or any court action resulting from the recount.

Legislation was enacted in 2017 to limit the right to request a recount to an “aggrieved party,” which is defined as a candidate who lost by no more than 40 votes when the total votes cast for the office was 4,000 or fewer, or a candidate who lost by no more than one percent of the total votes cast for the office when that total exceeds 4,000. That legislation did not amend the timeline for issuing a certificate of election when the initial canvass results indicate there is no aggrieved party that may request a recount.

AB 342 would allow the WEC and local election officials to expedite the certification of election results when no candidate is eligible to request a recount. This is especially useful after primary elections when there is a tight timeline to prepare ballots for the spring election or general election. It is also helpful after special elections to fill a vacancy in a state or local office where there is no legal reason to delay an individual from taking office. For example, occasionally the Assembly or Senate Chief Clerk has requested that we issue a certificate of election sooner than allowed under the current statutes to allow the winner of a special election to participate in a legislative session.

Thank you for the opportunity to testify before this committee on these bills. I will be happy to respond to your questions.

Respectfully submitted,

Meagan Wolfe  
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