

CHAPTER 17

RESIGNATIONS, VACANCIES, AND REMOVALS FROM OFFICE

17.001	Definition.	17.15	Removals; other officers.
17.01	Resignations to whom made; when effective.	17.16	Removals; definition; procedure; disqualification.
17.015	Municipal judge: multiple resignations.	17.17	Notice of vacancies.
17.02	Notice of resignations.	17.18	Vacancies, U.S. senator and representative in congress; how filled.
17.025	Temporary vacancies.	17.19	Vacancies, elective state offices; how filled.
17.03	Vacancies, how caused.	17.20	Vacancies in appointive state offices; how filled; terms.
17.035	Vacancies; military leaves.	17.21	Vacancies in elective county offices; how filled; term.
17.05	Governor may declare vacancies.	17.22	Vacancies in appointive county offices; how filled.
17.06	Removal of state officers; impeachment; address.	17.23	Vacancies in city offices; how filled.
17.07	Removals; legislative and appointive state officers.	17.24	Vacancies in village offices.
17.08	Suspension of receiver of moneys.	17.245	New city, village or town office, filling.
17.09	Removal of elective county officers.	17.25	Vacancies in town offices; how filled.
17.10	Removal of appointive county officers.	17.26	Vacancies in school boards; how filled.
17.11	Suspension of district attorney or sheriff.	17.27	Vacancies in other offices; how filled.
17.12	Removal and suspension of city officers.	17.275	Records of applicants for elective positions.
17.13	Removal of village, town, town sanitary district, school district, and technical college officers.	17.28	When officers may hold office.
17.14	Removal; assessors; boards of review; county boards; procedure.	17.285	Temporary vacancies; elections.
		17.29	Effect of chapter.

17.001 Definition. In this chapter, unless qualified, “cause” means inefficiency, neglect of duty, official misconduct, or malfeasance in office.

History: 2001 a. 103 s. 21.

17.01 Resignations to whom made; when effective. Resignations of public officers shall be made as follows:

(1) By the governor, lieutenant governor or any officer appointed by the legislature, to the legislature, if in session; otherwise by the governor or lieutenant governor, to the secretary of state, and by an officer appointed by the legislature, to the governor.

(2) By the secretary of state, treasurer, attorney general, state superintendent, by a district attorney and by all officers appointed by the governor alone or by the governor by and with the advice and consent of the senate, to the governor.

(3) By senators and members of the assembly, to the presiding officers of their respective houses, who shall immediately transmit the same to the governor, and to the governor during the recess of the legislature.

(4) By the justices of the supreme court, court of appeals judges and circuit judges, to the governor.

(5) By a sheriff, to the county clerk, who shall immediately transmit notice thereof to the governor.

(6) By a clerk of the circuit court, to the circuit judge.

(7) By a county supervisor, county clerk, county treasurer, coroner, register of deeds or county surveyor, to the sheriff, who shall immediately transmit a notice thereof, in case of a coroner or register of deeds, to the governor; and in case of a county supervisor, county clerk, county treasurer or surveyor, to the chairperson of the county board; and after such notices the sheriff shall file such resignations with the county clerk.

(8) By the mayor or alderperson or council member of a city, however organized, to the council; by other elective officers thereof, to the mayor; and by other city officers, to the officer or body having power to appoint in their stead.

(9) By a town officer, to the town board.

(10) By officers of a village, however organized, to the village board.

(11) By a school district officer, to the district board.

(12) By all other officers, to the officer or body having power to appoint in their stead.

(13) Resignations shall be made in writing, shall be addressed and delivered to the officer or body prescribed in this section and shall take effect, in the case of an officer who is not a school district

officer and whose term of office continues by law until a successor is chosen and qualifies, upon the qualification of the successor; and in the case of other officers including school district officers, at the time indicated in the written resignation, or if no time is therein indicated, then upon delivery of the written resignation. If the governor or the state superintendent of public instruction makes a provisional appointment under s. 17.20 (2) and the appointee files the required oath of office, the appointee qualifies for office, unless the appointment is withdrawn or rejected. Delivery of a resignation shall be made by leaving a copy thereof with the officer to whom it is required to be addressed and delivered at his or her public office or usual place of business, or if required to be addressed and delivered to a body, by leaving a copy with the following officer at his or her public office or usual place of business:

(a) If required to be addressed and delivered to the legislature, with the presiding officer of each house, or if required to be addressed and delivered to but one house, to the presiding officer of that house.

(b) If required to be addressed and delivered to the county board, city council or to the village, town or school board, to the clerk thereof, except the resignation of the county, city, village, town or school district clerk which shall be delivered to the chairperson of the county board, mayor, village president, town chairperson, or president, as the case may be.

(c) If required to be addressed and delivered to any other body, to the secretary or clerk thereof, if any, and if none, to any member of such body.

History: 1977 c. 187, 418, 427, 447, 449; 1983 a. 192 s. 303 (2); 1985 a. 135 s. 83 (1); 1985 a. 218; 1989 a. 31; 1989 a. 56 s. 258; 1989 a. 359; 1993 a. 184; 1997 a. 298.

Conditional resignations are permissible under this section. In sub. (13), “time” refers to the “point when something occurs.” *Ortin v. Schuett*, 157 Wis. 2d 415, 459 N.W.2d 596 (Ct. App. 1990).

17.015 Municipal judge: multiple resignations. If a municipal judge is elected under s. 755.01 (4), the judge shall submit resignations to each applicable officer or board under s. 17.01.

History: 1985 a. 89.

17.02 Notice of resignations. Notice of resignations, in addition to those provided for in s. 17.01, shall be given forthwith as follows:

(1) SENATORS AND MEMBERS OF CONGRESS. Of the resignation of a United States senator or member of congress from this state, by the senator or member of congress to the secretary of state.

(3) MUNICIPAL JUDGES. Of the resignation of municipal judges in any city or village, however organized, or in any town, by the

17.02 RESIGNATIONS, VACANCIES, REMOVALS

city, village or town clerk, as the case may be, to the clerk of the circuit court for the county.

History: 1977 c. 305; 1991 a. 316.

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 the office 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 the incumbent's duly appointed guardian, files a written petition for a hearing to determine the incumbent's 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 6 members. Findings shall be effective only by a secret affirmative vote of 6 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 workday 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 workday and when so filed shall rescind the previously filed certificate of temporary incapacity. At such time the regularly elected incumbent shall resume the 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. 323.53 (2) 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. 15.04 (2) or, if such office is vacant, by a deputy appointed by the governor.

History: 1971 c. 40 s. 93; 1975 c. 332; 1977 c. 196 s. 131; 1977 c. 449; 1979 c. 361 s. 113; 1983 a. 192; 1991 a. 316; 1995 a. 27 s. 9145 (1); 1997 a. 27; 2009 a. 42.

17.03 Vacancies, how caused. Except as otherwise provided, a public office is vacant when:

(1) The incumbent dies.

(2) The incumbent resigns.

(3) The incumbent is removed.

(4) The incumbent ceases to be a resident of:

(a) This state; or

(b) If the office is legislative, the district from which elected; or

(bm) If the office is a district attorney, the prosecutorial unit from which elected; or

(c) If the office is local and elective, the county, city, village, town, district or area from which elected, except as provided in ss. 60.30 (6), 119.08 (1) (c) and 120.05 (1) (d); or

(d) If the office is local and appointive, and residency is a local requirement, the county, city, village, town, district or area within which the duties of the office are required to be discharged.

(4m) In the case of a school district office, the incumbent is absent from the district for a period exceeding 60 days.

(5) Whether or not sentenced to imprisonment, the incumbent is convicted and sentenced by a state or federal court for treason, felony or other crime of whatsoever nature punishable by imprisonment in any jail or prison for one year or more, or for any offense involving a violation of the incumbent's official oath. A vacancy so created is not affected by a stay of execution of judgment. Reversal of the judgment, but not a pardon, immediately restores the incumbent to office if the term has not expired and entitles the incumbent to the emoluments of the office for the time the incumbent would have served in the office but for the judgment.

(6) A competent tribunal voids the election or appointment; or adjudges the incumbent to be incapable of understanding the

objective of the elective process; or places the incumbent under guardianship, unless the court finds that the incumbent is competent to exercise the right to vote.

(7) A person elected or appointed or reelected or reappointed to any office neglects or refuses to take and file the official oath or to execute or renew the official bond if required, or to file the oath or bond as prescribed by law.

(8) The incumbent neglects or refuses to execute and file an additional bond, when lawfully required, as prescribed by law.

(9) A person elected or appointed to fill a vacancy or for a full term declines the office in writing or dies before qualifying or declines in writing or dies before the time when, by law, the person should enter upon the duties of the office to which elected or appointed.

(10) If the office is elective, the incumbent's term expires, except for the office of sheriff, coroner, register of deeds or district attorney.

(11) If the office is a school board seat, the first annual school meeting of a school district fails to elect school board members for the district.

(12) The offices are established upon the creation by the legislature of a new county and a new town.

(13) Any other event occurs which is declared by any special provision of law to create a vacancy.

History: 1971 c. 154; 1971 c. 304 s. 29 (1); 1979 c. 249; 1983 a. 484; 1985 a. 304, 312, 332; 1987 a. 391; 1989 a. 31, 241; 2005 a. 387.

Cross-reference: See s. 59.20 (1) for county supervisor residency requirement.

Cross-reference: See s. 196.675 for vacancies in office if district attorney, city attorney, assistant city attorney, or judicial officer is employed by a common carrier.

City officers are subject to s. 17.03 vacancy provisions. *Wellnitz v. Wauwatosa Police & Fire Commissioners*, 151 Wis. 2d 306, 444 N.W.2d 412 (Ct. App. 1989).

The felony conviction and sentencing of a state senator creates a vacancy in the office without any action by the senate. 65 Atty. Gen. 264.

No vacancy occurs under sub. (4) when a supervisor's residence remains the same but the district boundaries have changed. 76 Atty. Gen. 10.

17.035 Vacancies; military leaves. (1) If an elected or appointed official or employee of any city, village, town or school district however organized shall enter the armed forces of the United States and shall remove himself or herself temporarily from the municipality or district for which that person is an officer or employee such temporary removal shall constitute a temporary vacancy in such office or position.

(3) Temporary vacancies shall be filled as other vacancies are filled, except that no election need be held to fill any part of a temporary vacancy. The term of the person appointed temporarily shall not extend beyond the expiration of the term of the officer or employee who entered federal service. In the event the original officer or employee completes the federal service and returns to the district or municipality during his or her original term of office, the officer or employee may file with the clerk of the district or municipality, within 40 days of completing the federal service, a statement under oath that the federal service has terminated and that the officer or employee elects to resume the office or position. Upon the filing of the statement the term of the temporary officer or employee shall cease, and the returning officer or employee shall be entitled to resume the duties of the office.

History: 1991 a. 316; 1993 a. 246.

17.05 Governor may declare vacancies. The governor may declare vacant the office of any state officer required by law to execute an official bond whenever a judgment is obtained against such officer for a breach of the conditions of such bond.

17.06 Removal of state officers; impeachment; address. (1) Any civil officer of this state may be removed from office by impeachment for corrupt conduct in office, or for crimes and misdemeanors as provided in article VII, section 1, of the constitution; and any supreme court justice or circuit court judge may also be removed from office by address of both houses of the legislature as provided in article VII, section 13, of the constitution.

(2) In this section, "address" means a procedure for removal of a judge from office based on a document entitled "Address" which specifies charges against a judge alleging misconduct or that the judge is not physically or mentally qualified to exercise the judicial functions of the judge's office. A copy of the address containing the charges against the judge shall be served upon the judge. The judge shall have the opportunity of being heard to present a defense against the charges. The judge may be removed from office by address of both houses of the legislature if two-thirds of all members elected to each house concur therein.

(3) A district attorney may be removed by the governor, for cause.

History: 1971 c. 142; 1983 a. 192; 1989 a. 31; 1991 a. 316.

17.07 Removals; legislative and appointive state officers. Removals from office of legislative and appointive state officers may be made as follows:

(1) Officers elected by either house of the legislature, by the house that elected them, at pleasure.

(2) State officers appointed by the legislature, by that body, at pleasure; or by the governor during the recess of the legislature, for cause.

(3) State officers serving in an office that is filled by appointment of the governor for a fixed term by and with the advice and consent of the senate, or serving in an office that is filled by appointment of any other officer or body for a fixed term subject to the concurrence of the governor, by the governor at any time, for cause.

(3m) Notwithstanding sub. (3), the earned release review commission chairperson may be removed by the governor, at pleasure.

(4) State officers serving in an office that is filled by appointment of the governor with the advice and consent of the senate to serve at the pleasure of the governor, or serving in an office that is filled by appointment of any other officer or body for an indefinite term subject to the concurrence of the governor, by the governor at any time.

(5) State officers serving in an office that is filled by appointment of the governor alone for a fixed or indefinite term or to supply a vacancy in any office, elective or appointive, except justices of the supreme court and judges and the adjutant general, by the governor at pleasure; the adjutant general, by the governor, at any time, for cause or for withdrawal of federal recognition of his or her commission under 32 USC 323; and all officers appointed by the governor during the recess of the legislature whose appointments are required to be later confirmed by the senate shall be deemed to be appointed by the governor alone until so confirmed.

(6) Other state officers serving in an office that is filled by appointment of any officer or body without the concurrence of the governor, by the officer or body having the authority to make appointments to that office, at pleasure, except that officers appointed according to merit and fitness under and subject to ch. 230 or officers whose removal is governed by ch. 230 may be removed only in conformity with that chapter.

History: 1971 c. 211; 1977 c. 196 s. 131; 1979 c. 221; 1987 a. 63; 1989 a. 121; 1991 a. 32; 1995 a. 27; 2009 a. 28.

Council members had authority to remove the executive director of the council. *Terrien v. Metropolitan Milwaukee Criminal Justice Council*, 455 F. Supp. 1375 (1978).

17.08 Suspension of receiver of moneys. (1) The governor may summarily suspend from office any appointive state officer who collects, receives or handles public moneys, if it appears to the governor by reason of action, proceedings, charges or credible information that the officer has in any particular willfully neglected the officer's duty in connection with public moneys. The suspension shall continue until the final determination of the action or proceedings or of the investigation of the charges or information, or pending any proceedings to remove the officer from office as provided by law for neglect of duty, and a competent person shall be appointed, in the manner and by the appoint-

17.08 RESIGNATIONS, VACANCIES, REMOVALS

ing power prescribed for filling vacancies in the affected office, to discharge the duties of the officer during the officer's suspension. If it is determined in the action or proceedings or is found upon investigation that the officer has not in any particular willfully neglected the officer's duty in connection with public moneys, and that fact is certified to the secretary of state by the judge, governor or other officer who conducted the action, proceedings or investigation, the suspended officer, unless the officer has been removed from office for any cause provided by law, shall thereby be restored to office, if the term for which the officer was elected or appointed has not expired, and shall thereby become entitled to the emoluments of the office for all of the time the officer would have served therein had the officer not been suspended as herein provided.

(2) This section in no manner impairs or restricts the power of the governor or other officer or body to remove any officer from office as provided by law.

History: 1991 a. 316.

17.09 Removal of elective county officers. Elective county officers may be removed from office as follows:

(1) COUNTY CLERK; TREASURER; SURVEYOR; SUPERVISOR. The county clerk, county treasurer or surveyor, or a county supervisor, by the county board, for cause, by a vote of two-thirds of all the supervisors entitled to seats on such board.

(2) CLERK OF CIRCUIT COURT. The clerk of the circuit court, by the judge or a majority of judges of the circuit court for the clerk's county, for cause.

(5) OTHER ELECTIVE COUNTY OFFICERS. The sheriff, coroner or register of deeds, by the governor, for cause.

History: 1977 c. 449; 1979 c. 32; 1989 a. 31.

Removal is governed by s. 17.16 and contemplates a determination of cause by the board. An ordinance making a violation *ipso facto* cause for removal impermissibly circumvents that procedure. 66 Atty. Gen. 148.

17.10 Removal of appointive county officers.

(1) APPOINTED BY GOVERNOR. County officers appointed by the governor may be removed by the governor for cause.

(2) APPOINTED BY COUNTY BOARD. County officers appointed by the county board may be removed by the county board for cause. All removals may be made by an affirmative vote of two-thirds of the supervisors entitled to seats on the county board.

(3) APPOINTED BY CHAIRPERSON OF COUNTY BOARD. County officers appointed by the chairperson of the county board may be removed by the chairperson for cause, except members of the county civil service commission who may be removed by the county board for cause under sub. (2). A county commissioner of elections so removed may appeal to the county board within 10 days after removal; the county board shall conduct a hearing in the manner determined by it and shall determine the question of removal.

(4) APPOINTED BY THE CIRCUIT JUDGE. County officers appointed by a judge or judges of the circuit court may be removed at pleasure by the judge or a majority of the judges authorized to appoint the officers' successors.

(5) APPOINTED BY THE COUNTY JUDGE. County officers appointed by the county judge may be removed at pleasure by the circuit judge or a majority of the circuit judges authorized to appoint the officers' successors.

(6) OTHERS. (a) Except as provided under par. (b), all other appointive county officers may be removed at pleasure by the officer or body that appointed them. Removals by a body, other than the county board, consisting of 3 or more members may be made by an affirmative vote of two-thirds of all the members thereof.

(b) The following appointive county officers may be removed for cause only:

1. Disposition staff and intake workers appointed to provide services under chs. 48 and 938.

2. Any person appointed to administer services under s. 46.22, 46.23, 51.42 or 51.437.

(7) GENERAL EXCEPTION. County officers appointed according to merit and fitness under and subject to a civil service law, or whose removal is governed by such a law, shall be removed only as therein provided.

History: 1977 c. 354; 1983 a. 192; 1985 a. 29; 1995 a. 77.

In a county that does not have a county executive or administrator, the personnel committee of the county board does not possess the statutory authority to remove the county social services director. The county board may not, under s. 59.025, 1993 stats., [now 59.03 (1)], transfer the authority to appoint. 81 Atty. Gen. 145.

Removal of the chairperson of a county board may be at the will of a simple majority of the board under s. 59.12. This section is inapplicable. Sub. (2) applies only to persons who are removed from a position as a county officer. Ending the tenure of a member of the county board as chair of the board does not oust that member from county office but only from a particular position on the board. OAG 1–07.

17.11 Suspension of district attorney or sheriff. (1) If any district attorney or sheriff is arrested for or charged with any offense against the laws of this state, or if the governor is credibly informed that any district attorney or sheriff is guilty of any offense against the laws of this state, or that proceedings are pending before any court or officer involving any criminal charge against any district attorney or sheriff, or that any district attorney or sheriff willfully neglects or refuses to perform that district attorney's or sheriff's duties, the governor shall in the case of a felony and may in the case of a misdemeanor suspend the district attorney or sheriff from office until the charge shall be investigated and finally determined. The governor shall, in the case of the district attorney, appoint the attorney general or one of the attorney general's assistants or some competent attorney of the state, and the governor shall, in the case of the sheriff, appoint a suitable person, to discharge the duties of the affected office during the suspension.

(2) (a) The state shall pay an attorney temporarily appointed under sub. (1) for his or her services and expenses in an amount determined and fixed by the governor.

(b) The county in which a person is temporarily appointed sheriff under sub. (1) shall pay the appointed sheriff for his or her services in an amount determined and fixed by the governor and certified by the governor to the county clerk of the county.

(3) Any attorney so temporarily appointed shall have all the power and discharge all the duties of the district attorney and that attorney shall speedily bring to a hearing and determination any charges made against the district attorney so suspended. Any person so temporarily appointed as sheriff shall have all the power and discharge all the duties of sheriff.

(4) If it is determined in the action or proceeding or is found upon the investigation that a district attorney or sheriff suspended under this section is not guilty of an offense, or has not willfully neglected or refused to perform his or her duties, as charged, that fact shall be certified by the governor to the department of administration if a district attorney is involved or to the county clerk of the sheriff's county if a sheriff is involved. Upon the certification, the district attorney or sheriff shall be:

(a) Entitled to the emoluments of the office for the time he or she would have served in the office had he or she not been suspended under this section; and

(b) Restored to office if the term for which he or she was elected or appointed has not expired.

(5) This section in no manner affects provisions of law relating to the removal from office of the district attorney or sheriff.

History: 1989 a. 31; 1991 a. 316.

17.12 Removal and suspension of city officers.

(1) GENERAL AND SPECIAL CHARTER. Officers of cities, except public officials, as defined in s. 62.51 (1) (b), operating under the general law or under special charter including school officers, may be removed as follows:

(a) *Elective.* Elective officers by recall as provided in s. 9.10, or by the common council, for cause.

(c) *Appointive.* Appointive officers, by whomsoever appointed, by the common council, for cause, except officers appointed by the council who may be removed by that body, at pleasure. Officers appointed by any other officer or body without

confirmation or concurrence by the council, by the officer or body that appointed them, at pleasure. The council may conduct a hearing thereon by a committee which committee shall proceed in such manner as may be determined by it and make full report to the council, which shall determine the question upon such appeal.

(d) *Votes required.* Removals by the common council may be made only by an affirmative vote of three-fourths of all the members thereof, and by any other body consisting of 3 or more members, by an affirmative vote of two-thirds of all the members thereof.

(2) **COMMISSION FORM.** Officers of cities operating under the commission form of government may be removed as follows:

(a) *Elective.* Elective officers by recall as provided in s. 9.10.

(c) *Appointive.* Appointive officers, by whomsoever appointed, by the council, at pleasure, by a majority vote; and officers appointed by any officer or body other than the council may also be removed from office by the officer or body that appointed them, at pleasure, by vote as provided in sub. (1) (d).

(3) **SUSPENSION.** The mayor of any city may summarily suspend from office any officer thereof whose removal is sought and against whom charges have been preferred therefor, and may appoint an officer to discharge the duties of such office until such charges have been disposed of. If such charges are dismissed, the officer so suspended shall thereby be restored to office and be entitled to the emoluments of the office for all of the time the officer would have served therein had the officer not been suspended.

(4) **GENERAL EXCEPTION.** But no officer of any city, appointed according to merit and fitness under and subject to a civil service or to a police and fire commission law, or whose removal is governed by such a law, shall be removed otherwise than as therein provided.

History: 1987 a. 382; 1991 a. 316; 1999 a. 150 s. 672.

City officers are subject to s. 17.03 vacancy provisions. Wellnitz v. Wauwatosa Police and Fire Commissioners, 151 Wis. 2d 306, 444 N.W.2d 412 (Ct. App. 1989).

17.13 Removal of village, town, town sanitary district, school district, and technical college officers. Officers of towns, town sanitary districts, villages, school districts, and technical college districts may be removed as follows:

(1) **APPOINTIVE OFFICERS.** Except as provided in s. 60.30 (1e) (c) and (f), any appointive village, town, town sanitary district, school district and technical college district officer, by the officer or body that appointed him or her, at pleasure. Removal of any such officer by a body shall be by a majority vote of all the members thereof.

(2) **ELECTIVE VILLAGE OFFICERS.** Any elective village officer by a majority vote of all the members of the village board, because of continued physical inability to perform the duties of office or gross neglect of duty.

(3) **ALL OFFICERS.** Any village, town, town sanitary district, school district or technical college district officer, elective or appointive, including those embraced within subs. (1) and (2), by the judge of the circuit court of the circuit wherein the village, town, town sanitary district, school district or technical college district is situated, for cause.

History: 1971 c. 154; 1977 c. 449; 1983 a. 532; 1993 a. 399; 1995 a. 34, 225; 1999 a. 9; 2007 a. 20.

If a statute provides that a public officer, including VTAE (technical college) board members, serves at pleasure but is appointed for a term, the officer may be summarily dismissed during the term. 62 Atty. Gen. 97.

A town board was restrained from discharging its police chief until the issue of impermissible consideration of the chief's political activities was resolved. Kuhlmann v. Bloomfield Township, 521 F. Supp. 1242 (1981).

17.14 Removal; assessors; boards of review; county boards; procedure. Any assessor and any member of a board of review or of a county board of supervisors, in addition to being removable as otherwise provided, may be removed by the circuit court for the county of the assessor or member, as follows:

(1) **ASSESSORS.** Any assessor for one or more of the following causes:

(a) Willful or intentional assessment of property at other than its true cash value with the intent to subject such property to more or less than its lawful share of taxes.

(b) Willful or intentional omission of taxable property from the assessment roll with intent to permit the same to escape taxation.

(c) Willful or intentional assessment of the property of one person at a lower value than the property of another or others whereby favoritism or discrimination between taxpayers in the district is shown.

(d) Solicitation or receipt of any favor, reward, money or other thing of value of or from the owner of any taxable property in the assessor's assessment district for the assessment or valuation of property at other than its true cash value.

(e) Solicitation or demand by any assessor of any owner of property liable to assessment in the assessor's assessment district to aid, assist or promote the business or interests of such assessor by means of which and by virtue of the office of assessor the assessor shall gain or receive pecuniary profit or advantage that the assessor could not otherwise have gained or received.

(f) Any violation of law in the valuation or assessment of property in the assessor's assessment district.

(g) Failure to use the "Wisconsin Property Assessment Manual" provided under s. 73.03 (2a) and as required by s. 70.32 (1) and 70.34. The certification of any assessor removed under this paragraph may for sufficient reason be reinstated by the secretary of revenue after one year upon formal application for reinstatement.

(h) Failure or refusal to deny claims for exemption or to terminate exemptions pursuant to direction of the secretary of revenue under s. 73.03 (45).

(2) **MEMBERS OF BOARDS OF REVIEW AND COUNTY BOARD.** Any supervisor, alderperson, trustee or other officer who acts as a member of a board of review or of the county board of supervisors, for one or more of the following causes:

(a) Willful or intentional valuation or equalization of property of persons or towns, cities or villages at other than the true cash value thereof, with the intent to subject the property of persons or of towns, cities or villages to more or less than their lawful share of taxes.

(b) Aiding, abetting or assisting in any understanding, combination or conspiracy to value or equalize the property in towns, cities or villages in a county at other than the true cash value, with intent to subject the property in one or more towns, cities or villages to more or less than its lawful share of taxes for state or county purposes or both.

(c) Any violation of law in the valuation or equalization of property in towns, cities or villages or in the discharge of official duties.

(3) **PROCEDURE.** Removals under this section may be made by the circuit judge, by order specifying the cause thereof, a copy of which order shall be certified by the circuit judge to the proper town, village or city clerk. The removal shall be made only upon a duly verified petition signed by a resident of the county setting forth fully the charges preferred against the officer. The district attorney of the county upon complaint showing cause therefor shall prepare the petition and have the petition duly verified by the complainant. The judge, upon the presentation of the petition, shall by an order to show cause, which shall be served upon the officer personally at least 10 days prior to the hearing, fix a time and place for hearing the matters alleged in the petition. The testimony shall be taken and the proceedings conducted under such reasonable regulations as the judge prescribes. The district attorney shall attend the hearing and conduct the proceedings on behalf of the petitioner. The removal of the officer shall disqualify the officer from holding the office for 3 years from the date of the order of removal.

(4) **COSTS.** If the court, after a hearing on the merits, dismisses the petition and further finds the complaint was willful and mali-

17.14 RESIGNATIONS, VACANCIES, REMOVALS

cious and without probable cause, the court shall order judgment in favor of the officer and against the petitioner for \$10 attorney fees and for the costs and fees of witnesses and officers incurred on behalf of the officer. The judgment shall be signed by the clerk of circuit court and entered in the judgment and lien docket. An execution may be issued against the property of the petitioner in the same mode as upon a judgment entered in the circuit court in civil actions founded in tort. Upon the return of the execution unsatisfied in whole or in part, an execution against the person of the petitioner may be issued in the manner and with the force and effect of an execution against the person as provided in ss. 815.01 to 815.10. In all other cases the judge may order that the expenses incurred in procuring witnesses and other needed actual expenses be paid out of the treasury of the county in which the officer resides upon certificates of the clerk of circuit court.

History: 1973 c. 90; Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1975 c. 218; 1977 c. 418, 449; 1991 a. 39, 316; 1993 a. 184, 224.

17.15 Removals; other officers. (1) JOINT COUNTY INSTITUTIONS. Any member of the governing body of any joint county school, hospital, sanatorium, asylum or other joint county institution, appointed by the county board of any county, may be removed by said county board, for cause; and any other officer of any such institution may be removed by the officer or body that appointed the officer, for cause.

(3) DANE COUNTY LAKES AND WATERSHED COMMISSION. Any commissioner of the Dane County lakes and watershed commission appointed under s. 33.44 (1) (c) to (g) may be removed by the appointing authority for cause.

(3m) SOUTHEASTERN WISCONSIN FOX RIVER COMMISSION. Any commissioner of the Southeastern Wisconsin Fox River commission appointed under s. 33.55 (2) (b) or (c) may be removed by the appointing authority for cause.

(5) LONG-TERM CARE DISTRICT. Any member of a long-term care district governing board appointed under s. 46.2895 (3) (a) may be removed by the appointing authority for cause.

History: 1989 a. 324; 1991 a. 39, 316; Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1997 a. 27; 1999 a. 9; 2001 a. 16; 2007 a. 20.

17.16 Removals; definition; procedure; disqualification. (1) Removals from office at pleasure shall be made by order, a copy of which shall be filed as provided by sub. (8), except that a copy of the order of removal of a circuit court commissioner shall be filed in the office of the clerk of the circuit court.

(3) Removals from office for cause under this chapter, except as provided in s. 17.14, shall be made as provided in this section, and may be made only upon written verified charges brought by a resident taxpayer of the governmental unit of which the person against whom the charges are filed is an officer, and after a speedy public hearing at which the officer shall have full opportunity to be heard to present a defense against the charges, personally and by counsel. A copy of the charges and written notice of the time and place for the hearing shall be given the officer by the removing power by delivery to the officer in person or by mailing the same to the officer at the officer's last and usual post-office address not less than 10 days prior to the hearing. The officer may within 10 days from service of the charges file with the removing power a verified answer thereto. The hearing shall be conducted and investigation made by the removing power with due dispatch, but in case of charges brought before the governor, the governor may appoint a commissioner to conduct the hearing, make the investigation and report the testimony and proceedings to the governor, and the council of any city having a membership of more than 20, in case of charges brought before it, may appoint a committee of not less than 5 of its members, to conduct the hearing, make investigation and report the testimony and proceedings to it. The commissioner or committee shall have the same power and authority as the governor or the council, as the case may be, in the conduct of the hearing on and investigation of the charges.

(4) The removing power may, before acting upon any charges preferred against any officer, require the person preferring the

same to execute and deliver to such power a bond in the sum of \$1,000 with one or more sureties to be approved by such power, conditioned for the payment of all costs and expenses actually incurred by the state, county or other unit of which the person charged is an officer and by the removing power in the hearing and investigation of such charges.

(5) The removing power, and in case such power consists of more than one person, each such person is authorized to administer oaths and to issue subpoenas for the attendance of witnesses and the production of evidence, and may make and enforce such orders and rules as are necessary to properly conduct such hearing and may appoint and fix the compensation of a stenographer to take testimony thereat.

(7) (a) No person may be excused from testifying or from producing evidence on the hearing for the reason that the testimony, documentary or otherwise, required of him or her may tend to incriminate him or her, but no person so testifying may be prosecuted for or on account of testifying or producing any documentary evidence, except for perjury committed in giving the testimony.

(b) The immunity provided under par. (a) is subject to the restrictions under s. 972.085.

(8) Removals from office for cause shall be by order, a certified copy of which, together with a complete transcript of the testimony and proceedings at the hearing and a statement of the cause or causes for which removal is made, shall be filed by the removing power as follows:

(a) In the case of a state officer, in the office of the secretary of state.

(b) In the case of other officers, in the office of the clerk of the unit of which the person removed was an officer.

(c) In the case of officers of joint county institutions, in the office of the county clerk of the county wherein the buildings of such institution are located.

(9) In the case of procedure for removals by the governor, all expenses incurred shall be paid upon vouchers duly certified by the governor and shall be charged to the appropriation provided in s. 20.525. In the case of procedure for removals by any other state officer or body, such expenses shall be paid out of the appropriation to the officer or body invested with power to remove. In case of procedure for removals by other officers or bodies, the expenses thereof shall be paid by the unit of government of which the person against whom charges are preferred was an officer. But if the removing power finds that the complaint was willful and malicious and without probable cause all such expenses shall be paid by the person who preferred the charges and may be collected in an action against the person or on the bond furnished by the person.

(10) A person lawfully removed from office shall be ineligible to appointment or election to fill the vacancy caused by such removal.

History: 1989 a. 122; 1991 a. 316; Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 2001 a. 61, 103.

The common council's removal of an employee statutorily entitled to the position deprives the employee of both liberty and property; therefore, employee is entitled to full due-process protections. Aldermen who initiated removal proceedings were not thereby disqualified as impartial adjudicators. State ex rel. DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W.2d 689 (1976).

"Expenses" under sub. (9) relates solely to expenses incurred by the "removing power", not by the person bringing written charges. In Matter of Petition to Remove Kamps, 118 Wis. 2d 482, 347 N.W.2d 911 (Ct. App. 1984).

Removal is governed by s. 17.16 and contemplates a determination of cause by the board. An ordinance making a violation *ipso facto* cause for removal impermissibly circumvents that procedure. 66 Atty. Gen. 148.

17.17 Notice of vacancies. Notice of vacancies occurring otherwise than by resignation shall be given forthwith as follows:

(1) SENATORS AND MEMBERS OF CONGRESS. In the office of United States senator or member of congress from this state, by the county clerk of the county wherein such officer resided at the time of election, to the government accountability board.

(3) **VACANCIES BY JUDGMENTS.** In any office occurring by virtue of a judgment of a court of this state convicting the incumbent of and sentencing the incumbent for treason, felony or other crime of whatsoever nature punishable by imprisonment in any jail or prison for one year or more, or convicting the incumbent of and sentencing the incumbent for any offense involving a violation of the incumbent's official oath; or declaring the election or appointment of any officer to be void or that the office of any officer has been forfeited, or become vacant; or adjudging any officer to be insane, by the clerk of such court to the officer or body authorized to fill such vacancies, or if such vacancies are required to be filled only by election, then to the officer authorized to give notice thereof.

(4) **JUSTICES AND JUDGES.** In the office of justice of the supreme court, court of appeals judge, or judge of a circuit court, by the director of state courts to the governor and the government accountability board.

(5) **OTHER VACANCIES.** In city, village, town or school district offices, other than those of which notice is required by sub. (3), by the clerk or in the clerk's absence by the treasurer thereof, and in state, county and other offices other than those of which notice is required by sub. (3), by the county clerk of the county wherein the officer resided at the time of election or appointment, or in the clerk's absence by the sheriff, to the officer or body authorized to fill such vacancies, or if such vacancies are required to be filled only by election, then to the officer authorized to give notice thereof.

History: 1973 c. 334 s. 57; 1977 c. 187, 449; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1991 a. 316; 2007 a. 1.

17.18 Vacancies, U.S. senator and representative in congress; how filled. Vacancies in the office of U.S. senator or representative in congress from this state shall be filled by election, as provided in s. 8.50 (4) (b), for the residue of the unexpired term.

History: 1977 c. 22; 1979 c. 260; 1983 a. 484; 1985 a. 304.

17.19 Vacancies, elective state offices; how filled. Vacancies in elective state offices shall be filled as follows:

(1) **MEMBERS OF LEGISLATURE.** In the office of state senator or representative to the assembly, by election, as provided in s. 8.50, for the residue of the unexpired term. In addition, an anticipated vacancy in the office of state senator or representative to the assembly may be filled as provided in s. 8.50 (4) (e).

(2) **JUDICIAL.** In the office of justice of the supreme court, court of appeals judge or circuit judge, by temporary appointment by the governor, which shall continue until a successor is elected, as provided in s. 8.50 (4) (f), and qualifies. When so elected the successor shall hold the office for a full term and shall take office on August 1 succeeding the election.

(3) **PRESIDENTIAL ELECTORS.** In the office of presidential elector, by the remaining electors present in the manner prescribed by s. 7.75.

(3m) **GOVERNOR.** In the office of governor, by the lieutenant governor.

(3s) **DISTRICT ATTORNEY.** In the office of district attorney, by appointment of the governor for the residue of the unexpired term and until a successor is elected and qualified.

(4) **OTHER ELECTIVE STATE OFFICERS.** In the office of secretary of state, treasurer, attorney general or state superintendent, by appointment by the governor, and a person so appointed shall hold office until a successor is elected, as provided in s. 8.50, and qualifies, but if no such election is held, the person so appointed shall hold office for the residue of the unexpired term.

History: 1977 c. 187; 1979 c. 27; 1985 a. 304; 1987 a. 391; 1989 a. 31; 1991 a. 316.

17.20 Vacancies in appointive state offices; how filled; terms. (1) **GENERAL.** Vacancies in appointive state offices shall be filled by appointment by the appointing power and in the manner prescribed by law for making regular full term appointments

thereto, and appointees to fill vacancies therein shall hold office for the residue of the unexpired term or, if no definite term of office is fixed by law, until their successors are appointed and qualify.

(2) **INTERIM VACANCIES; TERMS.** (a) Vacancies occurring in the office of any officer normally nominated by the governor, and with the advice and consent of the senate appointed, may be filled by a provisional appointment by the governor for the residue of the unexpired term, if any, subject to confirmation by the senate. Any such appointment shall be in full force until acted upon by the senate, and when confirmed by the senate shall continue for the residue of the unexpired term, if any, or until a successor is chosen and qualifies. A provisional appointee may exercise all of the powers and duties of the office to which such person is appointed during the time in which the appointee qualifies. Any appointment made under this paragraph which is withdrawn or rejected by the senate shall lapse. When a provisional appointment lapses, a vacancy occurs. Whenever a new legislature is organized, any appointments then pending before the senate shall be referred by the president to the appropriate standing committee of the newly organized senate.

(b) A vacancy occurring in the membership of the professional standards council for teachers may be filled by a provisional appointment by the state superintendent of public instruction for the residue of the unexpired term, if any, subject to confirmation by the senate. Any such appointment shall be in full force until acted upon by the senate, and when confirmed by the senate shall continue for the residue of the unexpired term, if any, or until a successor is chosen and qualifies. A provisional appointee may exercise all of the powers and duties of the office to which the person is appointed during the time in which the appointee qualifies. Any appointment made under this paragraph that is withdrawn or rejected by the senate shall lapse. When a provisional appointment lapses, a vacancy occurs. Whenever a new legislature is organized, any appointments then pending before the senate shall be referred by the president to the appropriate standing committee of the newly organized senate.

History: 1973 c. 24; 1977 c. 29 s. 1649; 1977 c. 418; 1997 a. 298.

Provisional appointees under sub. (2) need not be confirmed by the senate before they can begin to serve. 69 Atty. Gen. 136.

The senate may not fill a vacancy that will not occur during that senate session. 76 Atty. Gen. 272.

17.21 Vacancies in elective county offices; how filled; term. Vacancies in elective county offices shall be filled in the manner and for terms as follows:

(1) **SHERIFF, CORONER, REGISTER OF DEEDS.** In the office of sheriff, coroner or register of deeds, by appointment by the governor for the residue of the unexpired term.

(3) **COUNTY CLERK, TREASURER, AND SURVEYOR.** In the office of county clerk, treasurer, or surveyor, by appointment by the county board for the residue of the unexpired term unless a special election is ordered by the county board, in which case the person appointed shall serve until his or her successor is elected and qualified. The county board may, if a vacancy occurs before June 1 in the year preceding expiration of the term of office, order a special election to fill the vacancy. If the county board orders a special election during the period beginning on June 1 and ending on November 30 of any year, the special election shall be held concurrently with the succeeding spring election. If the county board orders a special election during the period beginning on December 1 and ending on May 31 of the succeeding year, the special election shall be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

(4m) **CLERK OF COURT.** In the office of clerk of circuit court, by appointment of the judge, or by a majority of the judges of the circuit court for the county, for the residue of the unexpired term of the clerk.

(5) **SUPERVISORS, POPULOUS COUNTIES.** In the office of county supervisor of counties having a population of at least 500,000,

17.21 RESIGNATIONS, VACANCIES, REMOVALS

according to the last U.S. census, by election for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, in case it happens no later than December 1 preceding the first Tuesday in April, but if the vacancy happens after December 1 preceding the first Tuesday in April, then such successor shall be elected on the first Tuesday of April of the next ensuing year; but no election to fill a vacancy in the office may be held at the time of holding the regular election for such office. In addition to the elections required under this subsection, the county executive may order a special election to be held under s. 8.50 to fill the vacancy. If an assembly district in the county is altered by legislative redistricting effective prior to the end of an existing supervisor term and a vacancy happens, the person elected to fill that vacancy for the residue of the unexpired term shall be an elector of the assembly district as it existed prior to redistricting.

(6) APPOINTMENTS, HOW REPORTED. For the information of all concerned appointments by the governor under sub. (1) shall be reported by the appointing officer to the county clerk. Appointments of the county board under sub. (3) shall be reported by the county clerk to the secretary of state. Appointments of clerks of court by a judge of the circuit court under sub. (4m) shall be reported to the county clerk and to the secretary of state.

History: 1973 c. 58; 1977 c. 449; 1979 c. 175 ss. 4, 53; 1979 c. 260; 1989 a. 31; 1995 a. 16 s. 2; 2005 a. 248.

Cross-reference: See s. 59.10 (3) (c) for method of filling vacancies on county boards.

17.22 Vacancies in appointive county offices; how filled. (1) Vacancies in any appointive county office shall be filled by appointment for the residue of the unexpired term by the appointing power and in the manner prescribed by law for making regular full term appointments thereto; but any person elected or appointed to fill a permanent vacancy in the office of county highway commissioner shall serve for the term prescribed under s. 83.01 (2). All appointments, subject to confirmation by the county board, made while the board is not in session, shall be acted upon by said board at its meeting next following such appointment.

(2) Vacancies in the offices of officers appointed by the county board, occurring when the board is not in session, shall be filled in manner and for terms as follows:

(b) In the office of the county highway commissioner, by appointment by the county highway committee. A person so appointed shall hold office until his or her successor is elected or appointed and qualified. The person's successor, if the office is regularly filled by election, shall be elected by the county board at a meeting held no later than 120 days after the date on which the vacancy occurs. The person's successor, if the office is regularly filled by appointment, shall be appointed as provided in s. 83.01 (1). The person's successor shall take office upon his or her election or appointment and qualification and shall hold office for the term prescribed under s. 83.01 (2).

(d) In the office of any other officer appointed by the county board, by temporary appointment by the chairperson of the county board. A person so appointed shall hold office until a successor is appointed and qualifies, and the successor shall be appointed by the county board for the residue of the unexpired term at its meeting next after such vacancy occurred.

History: 1983 a. 192; 1991 a. 316; 2005 a. 401.

Terms and vacancies in appointive county offices are discussed. 73 Atty. Gen. 99.

17.23 Vacancies in city offices; how filled. (1) GENERAL AND SPECIAL CHARTER CITIES. Vacancies in offices of cities operating under the general law or special charter shall be filled as follows:

(a) In cities of the 2nd, 3rd, or 4th class, in the office of mayor, except as provided in s. 9.10, by appointment by the common council for the residue of the unexpired term unless a special election is ordered by the common council, in which case the person appointed shall serve until his or her successor is elected and qualified. In the office of alderperson, by the common council, except

as provided in s. 9.10. A person so appointed shall hold office until a successor is elected and qualified. Unless otherwise ordered by the common council, a successor shall be elected for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, in case it happens no later than December 1 preceding the first Tuesday in April, but if the vacancy happens after December 1 preceding the first Tuesday in April and before that day, then the successor shall be elected on the first Tuesday in April of the next ensuing year. The common council may, if a vacancy occurs before June 1 in the year preceding expiration of the term of office, order a special election to fill a vacancy to be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

(b) In 1st class cities, in the office of mayor, except as provided in s. 9.10, the vacancy shall be filled by the president of the common council as acting mayor until a special election can be held under this paragraph. In such case, the acting mayor may continue to serve as president of the common council, in addition to exercising the powers and responsibilities of the office of mayor, until such time as a new mayor is elected and qualified, but the acting mayor may not take part in any vote of the common council during that period. In the office of alderperson, by special election, except as provided in s. 9.10. When a mayor is temporarily appointed, the common council shall order a special election for the office of mayor under s. 8.50 as promptly as possible, unless the vacancy occurs within 120 days of the expiration of the mayor's term of office. When an aldermanic seat becomes vacant, a successor shall be elected for the residue of the unexpired term on the first Tuesday of April or the Tuesday after the first Monday in November next after the vacancy happens, in case it happens no later than December 1 or June 1 preceding that day, but if the vacancy happens after December 1 or June 1 preceding that day, then the successor shall be elected on the following first Tuesday in April or Tuesday after the first Monday in November; but no election to fill a vacancy in such office may be held at the time of holding the regular election for that office. In addition, the president of the common council of any 1st class city may order a special election to be held under s. 8.50 to fill a vacant aldermanic seat prior to the time when that seat is required to be filled under this paragraph. If a special election is held under this paragraph after a redistricting plan is adopted, the election shall be held in the aldermanic district as it existed when the office was filled at the last preceding election.

(bm) In the office of municipal judge, in the manner provided in s. 8.50 (4) (fm).

(c) In the office of any other elective officer, and except as provided in s. 9.10, by appointment by the mayor subject to confirmation by the common council, for the residue of the unexpired term unless a special election is ordered by the common council, except that in case of vacancies in the office of any such officer of a 1st class city who is authorized by law to have a deputy, such deputy shall perform the duties of such office, and shall be entitled to the emoluments of such office during the remainder of the term. A person so appointed and confirmed shall hold office until a successor is elected and qualifies. The successor shall be elected as provided in par. (a).

(d) In appointive offices, by appointment for the residue of the unexpired term by the appointing power and in the manner prescribed by law for making regular full term appointments thereto.

(2) COMMISSION FORM. Vacancies in offices of cities operating under the commission form of government shall be filled as follows:

(a) 1. In the office of mayor or other member of the council, except as provided in s. 9.10, in the manner provided in sub. (1) (a). In the office of municipal judge, in the manner provided in s. 8.50 (4) (fm). On failure of the council to make an appointment under sub. (1) (a) for 30 days after the vacancy exists the city engineer shall be a temporary acting member of the council until such vacancy is filled in the manner provided by law, and shall have all

the powers, prerogatives and duties of the vacant office except the right to vote to fill a vacancy in the office of mayor or council member.

2. When 2 vacancies exist in the council the city clerk shall be a temporary acting member of the council until the vacancies are filled in the manner provided by law, and shall have all the powers, prerogatives and duties of the vacant office except the right to vote to fill a vacancy in the office of mayor or council member.

3. When 3 vacancies exist in the council the city treasurer shall be a temporary acting member of the council until the vacancies are filled in the manner provided by law, and shall have all the powers, prerogatives and duties of the vacant office except the right to vote to fill a vacancy in the office of mayor or council member.

4. When 2 or more vacancies exist in the council 6 months or more prior to the first Tuesday of April of any year a special election to fill the vacancy for the residue of the unexpired term of each such vacancy shall be held and conducted, and the returns thereof made in the manner and within the time required in the case of regular municipal elections, and the city clerk shall call and give notice of such special election as provided by law within 10 days of the date when such vacancies exist.

5. While serving as temporary members of the council the city engineer, city clerk and city treasurer shall not be entitled to have or receive any compensation for such temporary service.

6. The powers, prerogatives and duties conferred on such temporary acting members of the council shall be in addition to all those otherwise vested by law in such city engineer, city clerk and city treasurer.

7. It is hereby declared to be the purpose and intention of this paragraph to permit the city engineer, city clerk and city treasurer to have and perform the powers and duties herein provided as temporary acting members of the council, in addition to the regular powers and duties of their respective offices and notwithstanding any other contrary provision of the law.

8. This paragraph shall apply only to cities organized and operating under ss. 64.25 to 64.38.

(c) In appointive offices, by appointment for the residue of the unexpired term by the appointing power and in the manner prescribed by law for making regular full term appointment thereto.

History: 1977 c. 149, 273, 305; 1979 c. 260, 355; 1983 a. 484; 1985 a. 135, 304, 332; 1993 a. 184; 1995 a. 16 s. 2; 2005 a. 248.

17.24 Vacancies in village offices. (1) Except as provided in s. 9.10, a vacancy in any elective village office may be filled by appointment by a majority of the members of the village board for the residue of the unexpired term or until a special election is held under s. 8.50 (4) (fm) or sub. (2). A vacancy in an appointive office shall be filled in the same manner as the original appointment.

(2) Except as provided in s. 8.50 (4) (fm), a vacancy in any elective office in a village may be filled by special election of a successor for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, if it happens no later than December 1 preceding the first Tuesday in April, but if the vacancy happens after December 1 preceding the first Tuesday of April, then the successor shall be elected on the first Tuesday of April of the next ensuing year, and if the vacancy occurs before June 1 of the year preceding the expiration of the term of office, the village board of trustees may order a special election to fill the vacancy to be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the remainder of the unexpired term.

History: 1977 c. 305, 403, 447; 1979 c. 260; 1985 a. 304; 1995 a. 16 s. 2; 2005 a. 248.

17.245 New city, village or town office, filling. Whenever an elective office is created in a city, village or town pursuant to law or ordinance, the office shall not be deemed vacant until it has first been filled by the electorate, except that if a city, village or

town enacts an ordinance or bylaw creating a municipal court under s. 755.01 before the December 1 preceding the spring election the office of municipal judge for that court shall be considered vacant and a temporary appointment may be made by the city, village or town governing body pending the election of the initial elected occupant of the office.

History: 1977 c. 256, 447; 1993 a. 10; 1995 a. 16 s. 2.

17.25 Vacancies in town offices; how filled. Vacancies in town offices shall be filled as follows:

(1) In the town board, by the remaining supervisors and the town clerk, except when a special election is authorized under this subsection or as provided in s. 9.10, and except when the vacancy is caused by removal by the circuit judge as provided by law, which latter vacancy shall be filled by appointment by that judge. Vacancies in other elective town offices shall be filled by appointment by the town board, except as provided in ss. 8.50 (4) (fm) and 9.10, and except for vacancies caused by removal by the judge of the circuit court which latter vacancy shall be filled by that judge. Persons appointed under this subsection to fill vacancies shall hold office for the residue of the unexpired term or, if a special election is ordered to fill a vacancy, until the successor is elected and qualified, except persons appointed to fill vacancies as members of the water or light commission, which persons shall hold office only until their successors are elected and qualify and such successors shall be elected at the annual town meeting next after the vacancy occurs if the vacancy occurs 12 days or more prior to the meeting; otherwise at the annual town meeting held in the year next succeeding unless a special election is ordered to fill the vacancy at an earlier date, in which case they shall hold office until their successors are elected and qualify. Any town board having more than 3 members may, if a vacancy in the office of supervisor occurs before June 1 in the year preceding expiration of the term of office, order a special election to fill the vacancy. If the town board orders a special election during the period beginning on June 1 and ending on November 30 of any year, the special election shall be held concurrently with the succeeding spring election. If the town board orders a special election during the period beginning on December 1 and ending on May 31 of the succeeding year, the special election shall be held on the Tuesday after the first Monday in November following the date of the order. A person so elected shall serve for the residue of the unexpired term.

(2) In appointive offices, by appointment for the residue of the unexpired term by the appointing power and in the manner prescribed by law for making regular full term appointments thereto, except vacancies caused by removals by the judge of the circuit court which shall be filled for the residue of the unexpired term by the said judge.

History: 1977 c. 305, 403, 447; 1985 a. 304; 2005 a. 248.

This section requires that the town clerk participate in the process of filling vacancies in town offices and does not authorize the exclusion of the town clerk from the nomination part of the process. *Bingen v. Bzdusek*, 2002 WI App 210, 257 Wis. 2d 193, 650 N.W.2d 894, 01–3015.

17.26 Vacancies in school boards; how filled. Except as provided in s. 9.10, vacancies in a school board shall be filled as follows:

(1) In a common, union high or unified school district, by appointment by the remaining members. Each appointee shall hold office until a successor is elected and takes office under s. 120.06 (4) or 120.42 (2). When a vacancy occurs in the office of a board member who is in the last year of his or her term, or when a vacancy occurs after the spring election but on or before the last Tuesday in November in the office of a board member who is not in the last year of his or her term, the successor shall be elected at the next spring election. When a vacancy occurs after the last Tuesday in November and on or before the date of the next spring election in the office of a board member who is not in the last year of his or her term, the successor shall be elected at the 2nd following spring election.

(2) In a 1st class city school district, by special election as provided under s. 119.08 (4).

17.26 RESIGNATIONS, VACANCIES, REMOVALS

(3) Any person selected under sub. (1), upon being notified of his or her selection, shall be deemed to have accepted the selection unless within 5 days after notification he or she files with the clerk or director a written refusal to serve.

(4) In boards where the first annual meeting of the district has failed to elect school board members, by appointment by the state superintendent of public instruction.

History: 1973 c. 144; 1975 c. 138 s. 37; 1975 c. 200; 1977 c. 384, 403, 427, 445; 1979 c. 32; 1979 c. 260 ss. 82, 93m; 1979 c. 301; 1981 c. 287, 340; 1985 a. 225; 1995 a. 16 s. 2; 1995 a. 27 s. 9145 (1); 1997 a. 27.

17.27 Vacancies in other offices; how filled. (1) JOINT COUNTY INSTITUTIONS. Vacancies in the office of any member of the governing body of a joint county hospital or sanatorium or other joint county institution, or in the office of any other officer of a joint county institution, shall be filled by appointment by the appointing power and in the manner prescribed by law for making regular full term appointments thereto. A vacancy in the office of any such officer appointed by the county board, occurring while the board is not in session, shall be filled by appointment by the chairperson of the county board; the person appointed holds office until a successor is appointed for the residue of the unexpired term by the county board at its first regular meeting held next after the vacancy occurs and the successor qualifies.

(1m) METROPOLITAN SEWERAGE COMMISSION. Vacancies in the office of any directly elected member of a metropolitan sewerage commission under s. 200.09 (11) (am) shall be filled by temporary appointment of the governor until a successor is elected and qualified. A successor shall be elected in the manner prescribed for filling vacancies in elective city offices under s. 17.23 (1) (a).

(1n) DANE COUNTY LAKES AND WATERSHED COMMISSION. If a vacancy occurs in the office of any appointed commissioner of the Dane County lakes and watershed commission, the county executive of Dane County shall appoint a member who meets the applicable requirements under s. 33.44 (1) (c) to (g).

(3) TECHNICAL COLLEGE DISTRICT BOARD. Vacancies in the membership of any technical college district board shall be filled in the manner prescribed in ss. 38.08 (2) and 38.10.

(3m) LONG-TERM CARE DISTRICT BOARD. If a vacancy occurs in the position of any appointed member of a long-term care district board, the appointing authority shall appoint to serve for the residue of the unexpired term a person who meets the applicable requirements under s. 46.2895 (3) (b).

(4) ANY OTHER VACANCY. In case of a vacancy in any office in the state where no other provision is made for filling the same, it shall be filled by appointment by the governor.

History: 1977 c. 29; 1979 c. 221; 1983 a. 192; 1989 a. 324; 1991 a. 39; 1993 a.

399; Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16; 2007 a. 20.

17.275 Records of applicants for elective positions. Unless otherwise directed under s. 19.36 (7), no appointing authority or individual acting on behalf of an appointing authority may withhold from inspection or copying under s. 19.35 (1) any record of the name or address of an applicant for appointment to fill a vacancy in an elective office.

History: 1987 a. 392; 1991 a. 269.

17.28 When officers may hold office. When no different provision is made in respect thereto, any officer who is elected or appointed to fill a vacancy shall qualify in the manner required by law of the officer in whose stead the officer is elected or appointed. An officer who is elected or appointed to fill a vacancy in an elective office shall enter upon the duties of his or her office immediately upon qualification and, if elected, upon certification of the election result, and shall hold office for the residue of the unexpired term unless removed or recalled in accordance with law except that an officer who is appointed to fill a vacancy in the office of sheriff, coroner, register of deeds or district attorney shall hold office until his or her successor is elected and qualified, unless removed or recalled in accordance with law. An officer who is appointed to fill a vacancy in an appointive office shall enter upon the duties of his or her office immediately upon qualification and shall hold office for the residue of the unexpired term, if any, and until his or her successor is appointed and qualifies unless removed in accordance with law.

History: 1983 a. 484; 1985 a. 304; 1987 a. 391.

17.285 Temporary vacancies; elections. Notwithstanding any other provision of law, if a vacancy in an elective office occurs as a result of expiration of the term of an incumbent and a successor has not been determined due to the pendency of a recount or an appeal from a recount determination, no election or special election may be ordered or held to fill the temporary vacancy. If the law provides for the vacancy to be temporarily filled by appointment, the appointee shall serve until a successor qualifies.

History: 1983 a. 484.

17.29 Effect of chapter. The provisions of this chapter supersede all contrary provisions in either the general law or in special acts, except ss. 6.26 (2) (b), 6.28 (2) (b), 6.55 (6), 6.875, and 7.30 relating to appointed election officials and ch. 321 relating to the military staff of the governor and to officers of the Wisconsin national guard or state defense force; and shall govern all offices whether created by general law or special act, unless otherwise specially provided.

History: 1971 c. 304 s. 29 (2); 2005 a. 451; 2007 a. 200.