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VOICE VOTING IN THE WISCONSIN LEGISLATURE

The most basic function of a legislative body is to govern by enacting laws, a process that necessitates voting to determine the preferences of the membership. There are a number of common methods by which legislative bodies vote, including the roll call (calling the roll of members and recording each vote), division (those supporting and opposing a proposal stand in succession), and electronic formats. The simplest and quickest method is the voice vote, or *viva voce* vote (pronounced "VIE-vuh VOE-see" and translated to "with living voice" or "by word of mouth").

In a voice vote, members of a deliberative assembly respond to a question or motion verbally, stating "aye" or "yea" to vote in favor or "nay" or "no" to vote against. As opposed to other voting methods, votes are not tallied and recorded with members' names. Rather, the presiding officer determines the result based upon his or her own estimation of the verbal responses. Authorities on parliamentary procedure, such as *Robert's Rules of Order* and *Mason's Manual of Legislative Procedure*, recognize the voice vote as the most common method of voting in legislative bodies because of its efficiency. Though an obvious shortcoming of the voice vote is its difficulty in ascertaining the prevailing side on a question or motion that is close, *Mason's Manual* indicates that, "[i]t usually serves...because on most questions there is a decided majority."

FORM IN THE WISCONSIN LEGISLATURE

The precise construction of a voice vote can vary by legislative body and presiding officer. In the Wisconsin Legislature, legis-

lative rules direct each house's voice vote format but allow for variations in language. Assembly Rule 75 (2) states that a presiding officer's call for a voice vote shall "substantially" follow the construction, "All those in favor of...signify by saying 'Aye'; those opposed, 'No'." Senate Rule 71 is substantively similar, but provides a different form: "Those who are of the opinion that the bill pass, be concurred in, etc., (as the case may be) say, 'Aye'. Those of contrary opinion say, 'No'." As in the assembly, the senate rule allows the use of "other appropriate words."

This allowance of variations in language is clear on many voice votes. The final vote in each house for 2011 Assembly Bill 281 is a typical example:

Assembly

Presiding officer: *The question is, Assembly Bill 281, having been read three times, shall the bill be passed?*

All in favor will signify by saying, "Aye."

Those opposed say, "No."

The "Ayes" have it.

Senate

Presiding officer: *The question is concurrence in Assembly Bill 281.*

All those in favor of concurrence say, "Aye."

Those opposed, "No."

The "Ayes" have it. The bill is concurred in.

In both houses, the language strays from the form prescribed by legislative rules, but the effect is the same.

REQUIRED ROLL CALLS

There are notable instances when Wisconsin law prohibits the voice vote’s use as the sole voting method in the legislature. Assembly Rule 76 (2) reinforces this, stating, “Unless a roll call vote is required by the state constitution, by law, or by legislative rule, any question before the assembly may be decided by voice vote.” Specifically, the Wisconsin Constitution requires a roll call vote when the legislature acts on several types of proposals:

- Fiscal bills (Article VIII, Section 8),
- Amendments to the Wisconsin Constitution (Article XII, Section 1),
- Increased retirement benefits (Article IV, Section 26),
- Expulsion of a member of the legislature (Article IV, Section 8),
- Removal of a justice or judge (Article VII, Section 13),
- Overriding a veto (Article V, Section 10),
- Impeachment (Article VII, Section 1), and
- Elections by the legislature (Article IV, Section 30).

Even when a voice vote by itself is acceptable, the Wisconsin Constitution allows for a minority of members to request a roll call. Article IV, Section 20 states, “The yeas and nays of the members of either house on any question shall, at the request of one-sixth of

those present, be entered on the journal.” This provision is echoed in Senate Rule 72 (1) and Assembly Rule 76 (3). In practice, the request for a roll call by just one member often suffices. In this case, the presiding officer may simply ask if there is any objection before moving on to the roll call vote, thereby bypassing the one-sixth standard.

RECENT USE IN THE WISCONSIN LEGISLATURE

Although the voice vote is the most common voting form in the Wisconsin Legislature, it is difficult to quantify exactly how frequent it is used relative to roll call votes. Members may vote *viva voce* in a number of situations; of the hundreds of voice votes during a floor session, the majority do not concern a proposal’s final passage, but instead deal with procedural motions and amendments. Many of these situations that entail voice votes can be difficult to track using a proposal’s procedural history.

It is simpler to track voice vote use if the sample of votes is limited to final passage or concurrence (i.e., members responding to a question of whether a bill should pass or be concurred in following a third reading). The following table displays voice votes as a percentage of total final bill passage or concurrence votes for each session from 1995 to 2011.

	Assembly			Senate			Both Houses		
	Voice Votes	Total Votes	% Voice Vote	Voice Votes	Total Votes	% Voice Vote	Voice Votes	Total Votes	% Voice Vote
2011	165	319	51.7%	164	308	53.2%	329	627	52.5%
2009	367	555	66.1	297	460	64.6	664	1,015	65.4
2007	303	411	73.7	216	352	61.4	519	763	68.0
2005	368	666	55.3	334	610	54.8	702	1,276	55.0
2003	270	516	52.3	242	422	57.3	512	938	54.6
2001	145	320	45.3	134	202	66.3	279	522	53.4
1999	217	454	47.8	206	314	65.6	423	768	55.1
1997	247	455	54.3	260	399	65.2	507	854	59.4
1995	280	609	46.0	338	533	63.4	618	1,142	54.1
TOTAL	2,362	4,305	54.9%	2,191	3,600	60.9%	4,553	7,905	57.6%

In recent years, both houses have typically voted *viva voce* on most bills. In the senate, 60.9% of final passage votes from 1995 to 2011 were voice votes. Additionally, in all nine of the sessions, voice votes comprised a majority, ranging from 53.2% in 2011 to 66.3% in 2001, of total final passage votes. In the assembly, voice votes failed to comprise a majority of final passage votes in three sessions. Still, over all nine sessions, 54.9% of final passage votes were by voice. Combining final votes from both houses, voice votes made up a majority in all nine sessions. In sum, 57.6% of final passage votes from 1995 to 2011 were voice votes.

Voice vote use may vary for several reasons. Given its imprecision, if there are many proposals where anticipated discrepancies between “ayes” and “noes” are slim, the body may be more likely to call the roll. However, it is generally not safe to assume that a lower percentage of voice votes (and thus, a higher percentage of roll call votes) correlates with more divisive legislation. In both the senate and assembly, it is common to see bills passed with the number of “ayes” exceeding 30 (of a possible 33) and 90 (of a possible 99), respectively, indicating that some roll calls are in fact uncontentious. Additionally, variations in voice vote use may simply be the result of the preferences of presiding officers.

RESEARCH CONSIDERATIONS

Generally, a proposal’s procedural history is the authoritative guide to determining when and how important actions took place. But because procedural histories typically do not use terms that explicitly point to a voice vote, researching proposals passed *viva voce* can be confusing. However, since the Wisconsin Legislature only uses roll calls or voice votes to act on a proposal, and all roll call votes have tallies included in a proposal’s history, if the vote following third reading does not include a roll call tally, it is safe to assume that members voted *viva voce*.

In procedural histories, the actual language describing a voice vote following third reading is identical to a roll call vote, excepting the absence of a vote tally. Some of the most common terms for bill passage include:

“Read a third time and passed,”

“Read a third time and concurred in,”

“Read a third time and concurred in as amended,” and

“Passed.”

For resolutions and joint resolutions, procedural histories use similar terms, but replace “passed” with “adopted.” If a bill does not pass following third reading, its history will generally state, “Refused to pass” or “Refused to concur in.” In practice, such votes are rare; leadership generally does not allow a vote on a bill unless it is clear in advance that the proposal has sufficient support for passage.

The fact that voice votes are used on the majority of final votes poses a challenge for legislative researchers. Aside from physically monitoring how an individual legislator votes by voice on all proposals, there is no way to track a legislator’s complete voting record in Wisconsin. Although each legislator will typically have hundreds of roll call votes to their name by the end of a session, and thus an extensive voting record, it cannot be considered comprehensive.

Many researchers also attempt to track bipartisanship across sessions by determining the percentage of bills that enjoyed support from both Republican and Democratic legislators. Although each house often uses the voice vote on relatively noncontroversial proposals that are likely to be favored by both parties’ membership, a voice vote can also be used on party-line votes. Because of this, researchers should use caution when assuming that voice votes had bipartisan agreement. For example, one party may have a sizeable majority to the extent that the result of a voice vote would be clear on a party-line vote. In general, if the presiding officer is confident that one-sixth of present members would not

request a roll call following a voice vote, he or she may direct members to vote *viva voce*.

CONCLUSION

Despite these research difficulties – the lack of specific voice vote terminology in a procedural history and the inability to gather comprehensive voting records for legislators – most legislative bodies have determined that the advantages of the voice vote, speed

and simplicity, outweigh the challenges it poses. A modern legislature's considerable workload necessitates efficient procedures that maximize the time available for debate and consideration of all scheduled proposals. In this respect, the voice vote is a crucial tool at the disposal of modern legislative bodies, including the Wisconsin Legislature.