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**The procedure for ratification of an
amendment to the U.S. constitution by
the State of Wisconsin**

1960

Brief no.87

BRIEF NO. 87. THE PROCEDURE FOR RATIFICATION OF AN AMENDMENT TO THE U.S. CONSTITUTION BY THE STATE OF WISCONSIN
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New Amendment Proposed

On June 16, 1960 the U.S. Senate concurred in the House of Representatives amendments to Senate Joint Resolution 39 proposing an amendment to the U.S. Constitution granting representation in the electoral college to the District of Columbia. The proposal was directed to the several states for ratification.

The amendment which would probably become Article XXIII reads as follows:

"Article _____

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

'A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.'

Section 2. The Congress shall have power to enforce this article by appropriate legislation."

Ratification Procedure Set Forth

Article V of the Federal Constitution provides that when Congress proposes an amendment to the constitution it "shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress;...".

Procedure Used in Prior Cases to Ratify the U.S. Constitutional Amendments

Since 1919 five amendments to the U.S. Constitution have been ratified. They were as follows:

<u>Number</u>	<u>Subject</u>	<u>Year Proposed</u>	<u>Date Ratified in Wis.</u>
18	Prohibition	1917	1/19/19
19	Woman Suffrage	1919	6/10/19
20	Date of Inauguration	1932	1/24/33
21	Repeal of 18th (Prohibition Amdt.)	1933	4/25/33
22	2 Terms for President	1947	4/16/47

On January 9, 1919 the second day of the 1919 session, the Secretary of State of Wisconsin sent to the chief clerk of each house a communication transmitting a notice of a proposal to amend the U.S. Constitution to prohibit the manufacturing, sale and transportation of intoxicants. This had been received from the U.S. Secretary of State some time after December 28, 1917. (S.J. 1919, p. 42-45; A.J. 1919, p. 88-90)

In Wisconsin the actual proposal was introduced by Senator Skogmo as Joint Resolution No. 8, S., which provided for ratification of the amendment to the U.S. Constitution by the legislature as the federal proposal stipulated. The joint resolution was adopted by the senate 19 to 11, and concurred in by the assembly 58 to 39.

Joint Resolution No. 9, S., was also adopted and concurred in. It provided for "a joint hearing of the two houses on Joint Resolution No. 8, S., on January 15 at 10:15 a.m." but there is nothing to indicate either that a joint hearing or a committee of the whole was ever held.

On June 10, 1919 the Wisconsin Secretary of State sent similar letters to the chief clerks of both the senate and assembly transmitting the official notice of the proposed amendment relating to woman suffrage. It provided for ratification by the legislatures of the several states.

The original notice in this case was submitted on June 5 by the acting U.S. Secretary of State to the Governor of Wisconsin who on June 7 sent the papers to the Secretary of State asking him to transmit copies of the resolution to the legislature. (S.J. 1919, p. 1023-6; A.J. 1919, p. 1399-1401)

The joint resolution implementing this request, 108, A., was introduced by Mr. Nolan on June 10. It was adopted 54 to 2 and concurred in 23 to 1.

On January 12, 1933 the Wisconsin Secretary of State transmitted to the chief clerks of the senate and assembly a communication dated March 8, 1932 from the U.S. Secretary of State proposing an amendment to the U.S. Constitution to change the inauguration date for President, Vice President and Members of Congress. It provided for ratification by the legislatures of the several states and placed a time limit of 7 years on ratification. (S.J. 1933, p. 66-9; A.J. 1933, p. 36-39)

On January 17 Senator Cashman introduced Joint Resolution No. 8, S., to carry out the task of ratifying the 20th amendment. It was adopted 28 to 1 and concurred in 89 to 0.

On February 21, 1933 the U.S. Secretary of State notified the Governor that the U.S. Congress had proposed an amendment to the U.S. Constitution to repeal the 18th amendment. On February 24 this notification was transmitted by the Governor's office to the Wisconsin Secretary of State. There is nothing to indicate how this was done or how the Secretary of State notified the legislature, but on February 20, 1933 a bill relating to the election of delegates to conventions for the consideration of amendments to the federal constitution was introduced by Mr. Fox.

It must be noted that Congress provided that this proposal be ratified by constitutional conventions so Bill No. 352, A., which became Chapter 23, Laws of 1933, provided for the election-at-large of 15 persons on a nonpartisan ballot at the spring election. The law stipulated that the names of the 15 persons who favored and the 15 persons who opposed repeal who had the largest number of signers would appear on the ballot. The law provided that the president and secretary of the convention would certify the results to the Wisconsin Secretary of State who would in turn certify it to the U.S. Secretary of State. The proposal passed the assembly 88 to 6 and was concurred in 32 to 0.

The Procedure in 1947

In 1947 when the 22nd amendment to the U.S. Constitution was proposed by Congress on March 24, the Governor of Wisconsin was notified of this action in a letter dated March 27 from the U.S. Secretary of State. On March 31 the letter and certified copy of the proposed amendment were sent by the Governor to the Wisconsin Secretary of State. This data was not recorded in the journal and there is no evidence that the Wisconsin Secretary of State ever referred the proposal to the legislature although it is obvious that he did.

On April 3 Mr. Rundell introduced Joint Resolution 50, A., providing for the ratification of the amendment by the legislature. It was adopted 73 to 13 by the assembly and concurred in 27 to 5 by the senate. The date of concurrence apparently was accepted as the date of final action by Wisconsin.

On May 28, 1947, U.S. Secretary of State, George Marshall, sent Governor Rennebohm a letter which explained some of the procedures so well as to warrant repetition. It said:

"Under date of March 27, 1947 there was communicated to you a certified copy of a resolution of Congress entitled 'Joint resolution proposing an amendment to the constitution of the United States relating to the term of office of the President', passed during the first session of the 80th Congress of the United States.

"According to reports in the press the legislature of the State of Wisconsin recently ratified the amendment mentioned. The department has received no notice of the ratification in question. In this regard reference is made to the department's letter of March 27, 1947, a copy of which is enclosed requesting that you cause the amendment to be submitted to the legislature of your state for such action as it may take and that a certified copy of such action be communicated to the Secretary of State as required by section 160, Title 5, U.S. Code.

"As it is deemed of high importance that the records of the department of state in respect of amendments to the constitution shall be complete, it would be appreciated if you would transmit to the department a certified copy of any act or resolution of the legislature with regard to the proposed amendment."

On June 3, 1947 the Wisconsin Secretary of State prepared a certified copy of the joint resolution of ratification adopted by the Wisconsin Legislature, transmitted it to the Governor who on the same day sent it to the U.S. Secretary of State. On June 16, 1947 U.S. Secretary of State, George Marshall, acknowledged the receipt of the

certified copy of Wisconsin's action.

Change in Federal Procedure

Under section 160, Title 5, U.S. Code, prior to 1951, the U.S. Secretary of State notified the states of proposed amendments to the Federal Constitution and received notification of state actions relating to ratification thereof. In 1951 this was repealed and section 106 b, Title 1, U.S. Code, was added which made it the duty of the General Services Administration to keep the records. Thus, today communications from Washington notifying the states of pending amendments are received from the Administrator, General Services Administration, and it is to him that all official results of votes are transmitted.

Resume of Steps To Be Taken in 1960-61 by Wisconsin Relating to the Ratification of a Proposed 23rd Amendment to the U.S. Constitution

1. Governor receives communication from General Services Administration requesting that the proposal be submitted to the legislature.
2. Governor transmits the papers to the Secretary of State requesting him to notify the 1961 Legislature, when it convenes, of the pending amendment to the U.S. Constitution.
3. On or after the first day of the 1961 session of the legislature the Secretary of State submits the communications from the General Services Administration and the Governor to the chief clerks of each house.
4. Thereafter any member may introduce a joint resolution ratifying the constitutional amendment.
5. If the resolution is adopted and concurred in, the Secretary of State prepares a certification of such resolution, and submits it to the Governor.
6. The Governor transmits the certified copy of the joint resolution of ratification to the General Services Administration with a request for acknowledgment.
7. The General Services Administration acknowledges receipt of the documents setting forth Wisconsin's actions.

The Form of the Joint Resolution of Ratification

Based on past practices and revised procedures, the following form might be used to propose ratification of the suggested 23rd amendment.

Joint Resolution

Ratifying an amendment to the Constitution of the United States relating to the election of presidential electors by the residents of the District of Columbia.

Whereas, both houses of the eighty-sixth Congress of the United States of America, at the second session, by a constitutional majority of two-thirds, made the following proposition to amend the Constitution of the United States of America in the following words, to wit:

"JOINT RESOLUTION

"Proposing an amendment to the Constitution of the United States granting representation in the electoral college to the District of Columbia.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states:

"Article _____

"SECTION 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

"A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the elections of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

"SECTION 2. The Congress shall have power to enforce this article by appropriate legislation." Therefore, be it

Resolved by the (assembly) (senate), the (senate) (assembly) concurring, That the said proposed amendment to the Constitution of the United States of America be and the same is hereby ratified by the legislature of the State of Wisconsin, and be it further

Resolved, That copies of this joint resolution, certified by the Secretary of State be forwarded by the Governor to the General Services Administration of the government of the United States in Washington, D.C., and to the presiding officer of each house of the Congress of the United States.