

December 2, 2021
JOE CHRISMAN, STATE AUDITOR
LEGISLATIVE AUDIT BUREAU
22 E. MIFFLIN ST. SUITE 500
MADISON, WI 53703

Dear Mr. Chrisman,

Thank you for the opportunity to provide feedback and an initial response from the Wisconsin Elections Commission regarding the Legislative Audit Bureau's report on elections administration released to the public in October 2021. We appreciate the thoroughness of the audit and applaud the many hard-working staff members at the LAB and WEC who made this report possible.

We're pleased to note that your report confirms what we have stressed over the past year: the 2020 election cycle, especially the highly scrutinized November General Election, was fair and secure and the results are accurate. No major errors were identified that could have changed the outcome of the presidential election in our state.

The hard work of the WEC and the more than 1,900 local election officials who make up our highly decentralized election system combined to deliver consistent election administration amid a once-in-a-century pandemic.

In this letter we will briefly touch on the key topics outlined in your report as a means of offering our initial response to the audit. The report calls for agency follow-up by March 31, 2022, and we will meet that deadline with more detailed responses on all the recommendations included in the report.

Small agency, big impact

With a staff of less than 40 FTEs, the WEC is the primary contact and source of information on elections for elected officials and candidates for office; county and municipal clerks; other elections officials; and ordinary citizens across the great state of Wisconsin. In 2020, the agency received nearly 5 million public contacts, ranging from easy-to-answer inquiries to complicated requests for massive data sets. As you well know, we are the authoritative source for questions small and large about elections in Wisconsin.

Training is a big part of the WEC

Training is central to the role of the WEC, and it mostly involves preparing the state's nearly 2,000 municipal and county clerks and other election officers with the details and background they need to effectively administer elections. Given the extremely diffused nature of the elections process in our state – in Wisconsin we rely on municipal clerks, all 1,850 of them, to carry out our elections – it is no surprise that training is critical to the success of our electoral process. Hundreds of our clerks work only part-time and have another more primary job to earn a living, so connecting with them and training them on a regular basis is key to our mission.

The LAB audit thoroughly reviewed the WEC training program and offered several recommendations, all of which we will examine and explore in the months ahead. The report provides an overview of in-person training WEC staff conducted at various locations throughout the state prior to the enactment of travel restrictions due to the COVID-19 pandemic. The report notes that WEC offered virtual training for the remainder of 2020 but does not quantify those events as it does for the in-person training sessions. WEC wants to take the opportunity to highlight the dozens of training options it provided to clerks in a remote format during an unprecedented public health emergency.

Several issues with training-related administrative rules were identified, and the report made some suggestions for updating existing rules. Some of these are not controversial or complicated. Others will require staff to work with Commissioners to develop a plan for promulgating other required or suggested rules.

Records maintenance efforts already underway

The WEC will also be considering the five recommendations on the maintenance of voter registration records. Four of the five suggest closer relationships for data sharing with our existing partners: Department of Transportation (DOT), Department of Health Services (DHS), Department of Corrections (DOC), and the Electronic Registration Information Center (ERIC). A fifth recommendation suggests a change to the duplicate record identification process. In broad terms, the Voter Registration Records recommendations are very reasonable and largely consist of processes already underway at the agency.

Wis. Stat. § 85.61 requires only that the WEC maintain a written data exchange agreement with the Department of Transportation. This agreement was current and in effect at the time of the November 2020 General Election. We are currently working with DOT on an updated agreement that will be finalized prior to the 2022 elections.

Along with data sharing agreements, in the weeks ahead, the WEC will continue to explore and evaluate the LAB recommendations regarding records involving signature matching, duplicate records, deaths and felons, and the Electronic Registration information Center (ERIC). Each of these topics will require a deeper dive and more space than is available in this initial response.

Absentee ballots and ballot processing under review

The sharp increase in absentee voting caused by the COVID-19 pandemic was one of the biggest challenges Wisconsin election officials faced in 2020, and probably ever. Though not specifically called out in the report, it was concerns over the pandemic that pushed historic numbers of eligible voters to cast absentee ballots and request secure ways to return their completed ballots. During this unprecedented time, the Commission issued multiple sets of guidance to provide clarity to voters and help election officials conduct a safe, secure, and accurate election during a pandemic. Much of this guidance is reviewed in the report, and the WEC is committed to identifying actionable issues that should be improved.

Along with absentee ballots, the Commission will review all issues raised in the LAB report regarding ballot certificate templates, missing or incomplete information on a certificate or witness form, the use of drop boxes to collect completed ballots, the use of Special Voting Deputies in nursing homes, care facilities, and polling place relocations.

Electronic voting equipment passes test

We were pleased to see that LAB's review of the voting equipment certification process did not generate any recommendations for changes to that program. State law and administrative code requires the WEC to act as the certification entity for electronic voting systems.

LAB's review also did not uncover any anomalies with the voting equipment used to conduct the 2020 General Election that would call into question how votes were tabulated for that election.

Administrative Rules a clear focus

Significant portions of the report were devoted to questions around administrative rules vs. agency guidance. That's a big topic that will require a detailed response from the Commission once we've assessed

and evaluated all the recommendations on this topic. Many of these recommendations, on their face, appear to be quite reasonable.

However, it's important to note that the statutory authority vested in the bipartisan Commission is unique and broad when compared to other state agencies. Members of the Commission, and of the Commission's predecessor boards, have often considered the extent to which statute and case law grants them authority to consider and issue guidance on elections statute interpretation. The audit report makes it clear that the Commission will need to discuss its future approach to guidance and administrative rulemaking.

Post-election audit has changed recently

The section on the post-election voting equipment audit acknowledges that statute does not provide for how the post-election voting equipment audit is conducted. Instead, it requires a performance audit of the equipment used to tabulate votes in each General Election and leaves the specifics of the audit to WEC to determine.

WEC has made significant changes to both the sample size and timeline for completion of the audit over the past few general elections to improve the effectiveness of this requirement. The Commission has increased the sample size to 5% of all reporting units statewide and required that at least one piece of equipment is audited from each county. Prior to the 2018 General Election the Commission adopted staff recommendation that the audit should be completed prior to the certification of election results and this timeline was also used for the 2020 General Election.

Complaints and concerns all get reviewed

Wisconsin statutes, administrative code provisions, and authority delegated to the Administrator in consultation with the Chair and the full Commission, set forth the procedures for handling Wis. Stat. Section 5.05 and Wis. Stat. Section 5.06 complaints. While the LAB makes recommendations related to concerns that are not filed as complaints, there is no statutory requirement that the Commission provide a section on its website to accept election related concerns. However, the WEC uses the "Report a General Concern" section to identify trends within the concerns and to triage specific issues that may emerge.

Election concerns are not sworn complaints, and in many instances the information received through the "Report a General Concern" area of the website is opinions from voters or statements about what people may have seen in the news that do not require any action or response by WEC staff. Items that do require a response from WEC staff are sent out to the appropriate staff members and their supervisor. The WEC is informed of the number of concerns that are received, topic trends, and other issues that the full Commission needs to be aware of to potentially discuss in a meeting.

In closing, we again offer our appreciation for the LAB report on election administration. We are pleased and proud of the primary findings regarding a secure and accurate 2020 election, and we will endeavor to improve on all fronts moving forward using the LAB report as a roadmap to help us establish our priorities.

Simultaneously, the WEC remains interested in working with LAB to establish a process to update the report with corrections and clarifications as needed. Given the agency was not provided a draft version of the report to deal with such anomalies, WEC has a keen interest in doing so after the fact. We remain very open to dialogue with the LAB on those points of contention, from mild to significant.

Sincerely,