

WISCONSIN ELECTIONS COMMISSION

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ADMINISTRATOR MICHAEL HAAS

Wisconsin Elections Commission

Wisconsin Elections Commission Offices
212 E. Washington Avenue, Third Floor
Madison, Wisconsin
10:00 a.m. Tuesday, September 26, 2017

Open Session Minutes

Present: Commissioner Mark Thomsen, Commissioner Jodi Jensen, Commissioner Ann Jacobs, Commissioner Beverly Gill, Commissioner Julie Glancey and Commissioner Dean Knudson

Staff present: Michael Haas, Meagan Wolfe, Nathan Judnic, Sharrie Hauge, Reid Magney, Richard Rydecki

A. Call to Order

Commission Chair Mark Thomsen called the meeting to order at 10:01 a.m.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Michael Haas informed the Commissioners that proper notice was given for the meeting.

Chair Thomsen asked for a moment of silence for victims of hurricanes in Texas, Florida, Puerto Rico and the U.S. Virgin Islands. He also made a brief statement regarding upcoming oral arguments before the Supreme Court of the United States regarding the *Gill v. Whitford* redistricting case, asking the Court to decide as quickly as possible so election administrators can know which maps will be in place for 2018. The Chair also made a brief statement regarding the Russian government's unsuccessful attempts to interfere with Wisconsin elections systems, and issued a personal apology as the Chair because the Commission had previously reported there were no attempts to hack Wisconsin's systems. He said that had he asked more questions, the Commission would or should have known sooner about the attempts. Finally, the chair welcomed Dean Knudson, who was appointed to the Wisconsin Elections Commission by the Assembly Speaker to replace Steve King, who has been appointed U.S. Ambassador to the Czech Republic.

C. Personal Appearances

Brookfield City Clerk Kelly Michaels appeared to ask the Commission to support the absentee voting efficiency option, which would permit voters to place their absentee ballot into electronic voting equipment prior to Election Day.

Menomonee Falls Village Clerk Janice Moyer appeared in support of the absentee voting efficiency option.

Waukesha City Clerk Gina Kozlik appeared in support of the absentee voting efficiency option.

Wauwatosa City Clerk Carla Ledesma appeared in support of the absentee voting efficiency option.

Milwaukee City Election Commission Executive Director Neil Albrecht appeared in support of the absentee voting efficiency option.

Brown County Clerk Sandy Juno appeared in support of the absentee voting efficiency option.

Waukesha County Clerk Kathleen Novack appeared in support of the absentee voting efficiency option.

Rock County Clerk Lisa Tollefson appeared to express concerns about the current draft of the absentee voting efficiency option legislation.

Dane County Clerk Scott McDonell appeared to speak in support of the WEC staff recommendation regarding Election Night reporting. He also expressed concerns about the current draft of the absentee voting efficiency option legislation and requested that WEC staff work with local election officials to develop a solution to the challenge of processing all absentee ballots on Election Day.

Karen McKim of Waunakee appeared on behalf of Wisconsin Election Integrity to discuss prevention of future election miscounts through changes to canvass procedures and training.

Barbara Goeckner of Cedarburg appeared on behalf of the Wisconsin Municipal Clerks Association in support of true early voting and the absentee voting efficiency option.

Liz Whitlock of Pleasant Prairie appeared on behalf of Wisconsin Election Integrity to support the recommendation to decertify the Optech Eagle ballot tabulator and to urge audits after every election.

Brian Bell of Madison appeared on his own behalf as former data manager of the former Government Accountability Board to comment on election cost reports. He urged the Commission to consider whether the data collected could be used to make policy decisions.

Paul Malischke of Madison appeared on his own behalf to advocate for the rights of people with disabilities to vote during in-person absentee voting. He also discussed error messages on the DS-200 tabulator and suggested a change to one of the buttons on the screen.

Attorney Christopher Meuler of Milwaukee appeared on behalf of the Jill Stein Campaign to discuss their request for voting equipment software inspection and express hope that the Commission will make it happen as quickly as possible.

Erin Grunze of Madison appeared on behalf of the League of Women Voters of Wisconsin to discuss election security and integrity concerns.

H. Election Security Planning

(This agenda item was taken out of order.)

Assistant Administrator Meagan Wolfe made a brief oral presentation based on a memorandum starting on page 48 of the September 26 meeting materials regarding election security planning, which is designed to keep the public and the Commission apprised regarding what the staff is doing to protect Wisconsin's elections systems.

State of Wisconsin Chief Information Officer David Cagigal and State of Wisconsin Deputy Chief Information Officer Herb Thompson from the Department of Administration's Division of Enterprise Technology (DET) made an oral presentation based on a memorandum in the September 26 supplemental meeting materials regarding DET's efforts to protect the State's infrastructure against hacking attempts in 2016. Mr. Thompson addressed DET's work with the U.S. Department of Homeland Security (DHS) to share information and block access from suspicious IP addresses. He said while DET worked closely with DHS, DET was never notified that scanning attempts were made by the Russian government. Mr. Cagigal praised the Commission's election security planning outline.

Administrator Haas briefed Commissioners regarding the DHS notification on September 22 that Wisconsin was one of 21 states DHS considers having been targeted by Russian government cyber actors. He expressed frustration with the lack of timeliness and detail of the notification. He described numerous communications the WEC and DET have had with DHS and said Wisconsin was not notified of the targeting until September 22.

Commissioners, staff and the DET representatives discussed notifications, cyber security measures, how it is known that state elections systems were not hacked, and the difference between voter registration and vote tabulating systems.

Chair Thomsen said he would like to schedule a special meeting before the regular December meeting to further discuss election security issues, including a review of progress the staff makes in putting together the master election security plan.

The Chair called a recess at approximately 12:00 p.m. The meeting resumed at 12:31 p.m.

Ms. Wolfe continued her presentation regarding election security planning. She discussed application hosting and security services provided by DET, as well as the Commission's need to provide training to the WisVote system's 3,000 users about phishing attempts and username and password security.

Commissioners and staff discussed other security measures including multi-factor authentication for user access to WisVote and encryption of the database. Ms. Wolfe also discussed modernization of the canvass reporting system and the importance of maintaining adequate security of the transmission of official election results.

Administrator Haas noted that local election officials can benefit from better training regarding the canvassing process.

G. 2017-2019 Biennial Budget

Administrator Haas made an oral presentation based on a memorandum in the supplemental meeting materials for the September 26 meeting regarding the Governor's line-item vetoes of items in the Commission's 2017-2019 biennial budget. He said the Governor vetoed the Legislature's action to restore five positions of the six positions he cut in his original budget proposal. The Governor also used his line item veto to reduce the per diem for Commissioners from \$227 per meeting day to \$27 per meeting. At the Chair's direction, staff drafted a letter from the Commissioners to legislative leaders regarding the vetoed positions.

Commissioner Jensen said she believes the positions are crucial and was disappointed by the veto.

MOTION: Communicate by letter to leaders of the Wisconsin Legislature about the continuing need for positions vetoed by the Governor and express the Commission's desire to work with them on legislative action. Moved by Commissioner Jensen, seconded by Commissioner Jacobs.

Commissioner Knudson discussed his experience in the Legislature regarding budget issues and suggested the staff study the Governor's suggestions to use limited term employees and contractors at peak times, which could strengthen the case for adding back full-time employees.

Chair Thomsen said the letter needs to go out to legislative leaders, but the Commission should discuss staffing alternatives at its next meeting.

Chair Thomsen called the question. Motion carried unanimously.

Chair Thomsen called a recess for lunch at 1:16 p.m. The Commission meeting resumed at 1:56 p.m.

D. Minutes of Previous Meetings

May 23, 2017

June 20, 2017

Administrator Haas noted that the May meeting minutes are back on the agenda because the Chair requested changes at the June meeting regarding timelines for administrative rules, but the Commission never returned to the item later in the meeting.

MOTION: Approve minutes of the May 23 and June 20, 2017 open session meetings as submitted by staff. Moved by Commissioner Jacobs, seconded by Commissioner Glancey. Motion carried. Commissioner Knudson abstained.

E. National Voter Registration Day Resolution

Administrator Haas noted that today is National Voter Registration Day and asked the Commission to consider approving the resolution contained in the Commission's supplemental meeting materials. Chair Thomsen said he would entertain a motion with an amendment that the date is September 26, not September 27.

MOTION: Adopt the resolution recognizing National Voter Registration Day and encouraging Wisconsin citizens to register to vote. Moved by Commissioner Jacobs, seconded by Commissioner Knudson. Motion carried unanimously.

F. Presidential Advisory Commission on Election Integrity

Administrator Haas made an oral presentation based on a memorandum starting on page 18 of the September 26 meeting materials regarding policy questions posed by the Presidential Advisory Commission on Election Integrity (PACEI). He said that the questions accompanied PACEI's request for Wisconsin's voter registration list, and that most states have not answered the questions.

Commissioners and staff discussed whether the Commission has evidence of voter fraud and whether to consider the PACEI's questions as a public records request. Chair Thomsen said the Commission should send what information it has to PACEI, and can address the policy questions later.

I. Alternate Absentee Voting Proposal

Administrator Haas made an oral presentation based on a memorandum starting on page 25 of the September 26 meeting materials regarding the alternative absentee voting proposal. He indicated that there is a consensus regarding the difficulty of processing all absentee ballots on Election Day, and that Commission staff had been providing feedback to supporters of the proposal regarding administrative and significant policy issues to consider. Some of the issues identified by staff have been addressed in successive drafts of the legislative proposal and some have not. Administrator Haas indicated that the draft legislation included several policy decisions and the Commission may determine whether it wished to take a position regarding those policy choices or the specific administrative procedures outlined in the proposal.

Commissioners and staff discussed potential issues with the proposed legislation, including the potential for treating some voters differently than others, difficulties in programming voting equipment under tight time constraints, voting equipment security, moving polling place duties that may require having observers and politically-appointed election inspectors at the clerk's office, chain of custody for ballots, and processing of write-in votes.

Commissioner Glancey said the Commission needs to do something about the situation described by the clerks, but that it must be careful the legislation does not create more problems than it solves. Commissioner Jensen urged that the Commission remain engaged with the bill's author so potential problems can be addressed before passage rather than after enactment.

Hearing no motion, Chair Thomsen moved to the next agenda item. The Commission took no action.

J. Decertification of Optech Eagle Voting Equipment

Elections Supervisor Richard Rydecki and Elections Specialist Robert Williams made an oral presentation based on a memorandum starting on page 57 of the September 26 meeting materials regarding staff's recommendation to decertify the Optech Eagle ballot tabulator for use in Wisconsin after the November 2018 election. They reviewed the history of the Eagle's use in Wisconsin dating to 1994, as well as the problem of it reading only carbon-based marks. Clerks are well on the way to phasing out the Eagle, though some municipalities are still researching alternatives. The vendors servicing the Eagle will not support it after 2018.

Commissioners and staff discussed issues related to decertification including alternatives that municipalities with Eagles may be considering and whether to require municipalities using Eagles to remake all mail-in absentee ballots. Commissioner Knudson offered an amended version of staff's recommended motion.

MOTION: Approve December 31, 2018 as the decertification date of the Optech Eagle voting equipment, after which time the machines will no longer be eligible for use in any elections in the State of Wisconsin. Prior to December 31, 2018, direct all municipalities and counties using Optech Eagle equipment to remake all mail-in absentee ballots prior to processing them on Election Day, or to hand count those ballots. Direct that in event an Optech Eagle machine is used prior to December 31, 2018 and a recount is performed, a hand recount of ballots tabulated by the Optech Eagle must be performed. Direct staff to communicate this decision to all county and municipal clerks so that this policy is in place immediately and applies to all elections until the equipment is no longer in use. Moved by Commissioner Knudson, seconded by Commissioner Jensen. Motion carried unanimously.

K. Engineering Change Order Policy

Mr. Rydecki made an oral presentation based on a memorandum starting on page 62 of the September 26 meeting materials regarding engineering change orders for voting equipment systems that have already been approved for use in Wisconsin. The former Government Accountability Board had adopted a two-tier policy for approving *de minimis* and *non-de minimis* changes. Staff recommends the Wisconsin Elections Commission reaffirm the policy.

Commissioner Jacobs suggested a change to paragraph 5 of the policy changing “If the Administrator *and* Commission Chair disagree with the recommendation of the staff” to “If the Administrator *or* Commission Chair disagree”

MOTION: The Commission reaffirms the agency’s policy as described in the memorandum relating to applications for approval of modifications to voting systems already approved for use in Wisconsin, as amended, and directs staff to continue to implement the policy for such applications. Moved by Commissioner Jacobs, seconded by Commissioner Knudson. Motion carried unanimously.

L. Election Cost Reports

WisVote Trainer Patrick Brennan and WisVote Specialist Sarah Statz made an oral presentation based on a memorandum starting on page 67 of the September 26 meeting materials regarding collection of election cost data from county and municipal clerks. Staff is modernizing the Wisconsin Election Data Collection System (WEDCS) and seeking feedback from the Commission on changes to cost data it collects from clerks. They indicated that Wisconsin initiated the collection of cost data prior to most other states and the data can be useful to state and local policymakers as well as to academic researchers. They also stated that the collection of the cost data is a time-consuming task for Commission staff, and that the cost data is collected and reported by clerks in various ways which impacts its accuracy and consistency.

Commissioners and staff discussed Brian Bell’s comments during the Public Appearances section of the meeting regarding the usefulness of data collected and difficulty collecting it. Commissioner Knudson suggested not collecting cost data anymore since it is not required by state statute.

MOTION: End the requirement for clerks to submit election cost data immediately. Moved by Commissioner Knudson, seconded by Commissioner Gill. Motion carried unanimously.

M. Election Night Reporting

Administrator Haas made an oral presentation based on a memorandum starting on page 70 of the September 26 meeting materials regarding the requirement for county clerks to post results

on their websites on Election Night, and whether that requirement extends to the results of local and school district special elections when the county does not conduct the official canvass.

MOTION: Direct staff to advise municipal and county clerks that the requirement for municipal clerks to report election night results to county clerks, and for county clerks to post such results on a county website, does not apply to local and school district special elections for which the county does not conduct the official canvass. Moved by Commissioner Jacobs, seconded by Commissioner Jensen. Motion carried unanimously.

N. Administrative Rules

Legal Counsel Nathan Judnic made an oral presentation based on a memorandum starting on page 71 of the September 26 meeting materials regarding the status of administrative rule promulgation. He reviewed three scope statements that have been approved by the Governor's Office and published in the Wisconsin Administrative Register: EL Ch. 7 on the approval and security of electronic voting equipment and ballot security; EL Ch. 12 on the content of municipal clerk training curriculum and maintaining records in the statewide voter registration system; and EL Ch. 20 on the procedures for complaints filed against local election officials under s. 5.06, Wis. Stat. Staff recommends the Commission approve the scope statements and direct staff to draft the preliminary rules and draft economic impact statements.

MOTION: Approve the Statements of Scope for Chapter EL 7, relating to approval and security of electronic voting equipment and ballot security; EL Ch. 12, relating to the content of municipal clerk training curriculum and maintaining records in the statewide voter registration system; and Chapter EL 20, relating to procedures for complaints filed against local election officials under s. 5.06, Wis. Stats. The Commission further directs staff to draft the preliminary rules and draft economic impact statements for the above referenced code chapters. Moved by Commissioner Glancey, seconded by Commissioner Jensen. Motion carried unanimously.

MOTION: Authorize staff to draft a statement of scope to promulgate administrative rules which will prescribe the procedures and methods by which clerks are to maintain voter registrations which are generated using the Commission's online voter registration system. The Commission further directs the staff to submit the statement of scope for this proposed rule to the Department of Administration to obtain the Governor's approval. Moved by Commissioner Jacobs, seconded by Commissioner Gill. Motion carried unanimously.

Chair Thomsen asked staff to have the drafting completed by the Commission's December meeting.

Mr. Judnic updated Commissioners on the status of rules already submitted to the Legislature: EL Ch. 6 (procedures related to registration statements and the filing of certain documents electronically) and EL Ch. 21 (repeal provisions related to written advice issued by the Commission).

Commissioners and staff discussed preliminary rule drafts in progress, including the Election Observers rule, and the use of cell phones by observers.

Chair Thomsen said the Commission could address legislation in lieu of rulemaking at an upcoming special meeting.

O. Legislative Agenda

P. Legislative Update

Q. Commission Staff Update

Chair Thomsen said items O, P and Q would be addressed at the Commission's special meeting.

R. Per Diem Authorization

Because the 2017-2019 Biennial Budget changed statutes regarding per diem to a flat \$27 per meeting instead of \$454 per day of meetings, no Commission action is necessary to approve per diems.

S. Closed Session

Adjourn to closed session as required by statutes to confer with counsel concerning litigation strategy and personnel matters.

MOTION: Move to closed session pursuant to § 19.85(1)(g) to confer with counsel concerning pending litigation and § 19.85(1)(c) to consider the performance evaluation data of a public employee over which it exercises authority. Moved by Commissioner Jacobs, seconded by Commissioner Glancey.

Roll call vote:	Gill:	Aye	Glancey:	Aye
	Knudson:	Aye	Jacobs:	Aye
	Jensen:	Aye	Thomsen:	Aye

Motion carried unanimously. The Commission convened in closed session at 4:04 p.m.

T. Adjourn

MOTION: To adjourn. Moved by Commissioner Jacobs, seconded by Commissioner Jensen. Motion carried unanimously.

The Commission adjourned at 4:18 p.m.

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The next regular meeting of the Wisconsin Elections Commission is scheduled for Tuesday, December 12, 2017, at the commission's offices in Madison, Wisconsin beginning at 10:00 a.m.

September 26, 2017 Wisconsin Elections Commission meeting minutes prepared by:



Reid Magney, Public Information Officer

October 17, 2017

September 26, 2017 Wisconsin Elections Commission meeting minutes certified by:

Beverly Gill, Commission Secretary

December 12, 2017