
Wisconsin Elections Commission

Meeting of the Commission
Wednesday, August 22, 2018
10:30 A.M.

Agenda
Open Session

Wisconsin Elections Commission Offices
212 E. Washington Avenue, Third Floor
Madison, Wisconsin

- A. Call to Order**
- B. Administrator’s Report of Appropriate Meeting Notice**
- C. Trempealeau County District Attorney Recall Election** **2**
- D. Update on Agency Budget** **10**
- E. Closed Session**
 - 1. District Attorney Referral**
 - 2. Litigation Update**

19.851 The Commission’s discussions concerning violations of election law shall be in closed session.

19.85 (1) (g) The Commission may confer with legal counsel concerning litigation strategy.

F. Adjourn

The Elections Commission will convene in open session but may move to closed session under Wis. Stat. §§ 19.851 and then reconvene into open session prior to adjournment of this meeting. This notice is intended to inform the public that this meeting will convene in open session, may move to closed session, and then may reconvene in open session. Wis. Stat. § 19.85 (2).

WISCONSIN ELECTIONS COMMISSION

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INTERIM ADMINISTRATOR MEAGAN WOLFE

MEMORANDUM

DATE: For the August 22, 2018 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Interim Administrator, Wisconsin Elections Commission

Prepared and Presented by:
Michael Haas, Staff Counsel
Nathan Judnic, Senior Elections Specialist

SUBJECT: Certification of and Timeline for Trempealeau County District Attorney Recall Election

The Elections Commission received a campaign registration statement (CF-1) and a statement of intent to circulate a recall petition (EL-170i) from the Recall Taavi McMahan recall committee on May 25, 2018. The Elections Commission received a recall petition on Monday, July 23, 2018 against Trempealeau County District Attorney Taavi McMahan. The petition was filed by the Recall Taavi McMahan Committee. WEC staff has completed its first and second reviews of the petition and determined that it contains 3,149 valid signatures, which is 466 more signatures than the required minimum number of 2,683 valid signatures. District Attorney McMahan did not file any challenges to the petition by the deadline of August 2, 2018. Based upon its review, staff recommends that the Commission certify the recall petition as sufficient and order the election to be scheduled. Pursuant to Wis. Stat. § 9.10(3)(b), the Commission must make a determination as to the sufficiency of the petition and order an election, if the petition is sufficient, within 14 days of the petition being submitted, or by August 23, 2018.

Wis. Stat. § 9.10(3) governs the timing of the recall election and, if necessary, the recall primary. If the petition is sufficient, the Commission must order the recall election to be held “on the Tuesday of the 6th week commencing after the date of filing of the petition.” The petition is “filed” when the WEC Administrator certifies to the Commission that it is sufficient in form and contains the required number of valid signatures. If more than one candidate qualifies for the ballot in any ballot party, the date ordered by the Commission becomes the recall primary and the recall election is held four weeks after the primary. A copy of Wis. Stat. § 9.10 is attached.

The Administrator will “file” the petition on the same day of the Commission meeting. The Tuesday of the 6th week after the filing of the petition will be October 2, 2018. Pursuant to Wis. Stat. § 9.10(3)(c), nomination papers would be due on September 4, 2018, allowing 14 days for circulation of nomination

papers by any candidate other than the incumbent. The incumbent is automatically a candidate unless he resigns within 10 days after the petition is filed. Wis. Stat. § 9.10(3)(c). The recall election still occurs even if the incumbent resigns within that time period.

It is relatively rare that District Attorney elections involve a primary but that may be less predictable in a recall situation. If there is no need for a primary, the recall election on October 2, 2018 would create limited complications combined with the administration of the General Election on November 6, 2018. Ballots for the recall election in Trempealeau County would be available by September 11, 2018, and ballots for the General Election would be available by September 20, 2018.

If a recall primary is required because more than one candidate qualifies for the ballot in any political party which has ballot access, the election date ordered by the Commission becomes the date for the recall primary. In that case, Wis. Stat. § 9.10(3)(f) provides that the recall election “shall be held on the Tuesday of the 4th week commencing after the recall primary” unless that day is a holiday. The fourth Tuesday after October 2, 2018 is October 30, 2018, which is one week prior to the General Election.

Conducting a recall election so close to the General Election risks generating significant voter confusion and administrative complications when voters and election officials will be focusing on the high profile General Election. There would be deadlines that are close but different for activities such as issuing and tracking absentee ballots and administering in-person absentee voting. Municipal clerks may also have a challenge in securing election inspectors to serve during two consecutive Tuesdays. Clerks may also have to incur unexpected costs to procure additional memory devices to conduct two elections according to this timeline. Wisconsin law requires that memory devices used in an election may not be cleared and reprogrammed for 21 days after that election meaning devices used for the recall election will not be able to be used for the General Election. In addition, municipal and county canvass boards would be meeting in the week following the recall election which is also the week of the General Election.

In the past and at the request of local clerks, the State Elections Board and the Government Accountability Board occasionally authorized a local recall election to take place on the same day as a regularly-scheduled election in situations where the recall election schedule would result in two elections within one or two weeks. In doing so, the state elections agency attempted to balance the constitutional right of the recall petitioners to a timely recall election with the reality of the significant administrative challenges and potential voter confusion which would likely occur. For example, the Elections Board authorized the City of Milwaukee Elections Commission to schedule a recall election on the date of the Spring Primary when the statutory recall schedule would have otherwise required the recall election to be held two weeks prior to the Primary. In that case, the Elections Board advised:

The standard for compliance with the recall statute has been held to be substantial compliance, not strict compliance.¹ Although the context in which that standard has been applied is in regard to the recall petitioners’ compliance, the same standard has to apply to the governing body calling the election. In providing the schedule for the holding of the recall election, the legislature intended that recall elections be held in close proximity to the petition process while the subject of recall is still fresh in the minds of the persons who signed the recall petitions; and to avoid delays that could have the effect of frustrating the right of recall by

¹ See *In re Jensen* (App. 1984) 121 Wis.2d 467; *Matter of Haase* (App.1984) 120 Wis.2d 40

perpetuating the term of office of an incumbent whom the electorate had determined to remove from office.

Even in the scheme of a two-year term of office, however, a postponement of two weeks is not an undue delay or an undue extension of the term of office. Furthermore, the scheduling of the recall election to coincide with the spring primary serves an equivalent public policy: economy of elections. By coinciding two distinct elections, the expense and inconvenience of a separate election is avoided and the participation of the public in the recall election is maximized or enhanced.² Consequently, scheduling of the recall election to coincide with the spring primary substantially complies with s.9.10, Stats. A delay for any longer period, however, may not be substantial compliance and would have to be evaluated on its own merits.

For similar reasons, Commission staff recommends that the Commission order that if a recall primary is required, the recall election would take place on November 6, 2018, concurrent with the General Election and five weeks following the recall primary. Under these circumstances a postponement of one week is not an undue delay or undue extension of the incumbent's term of office, and it serves the same administrative interests for both local election officials and voters. Staff has contacted the recall petitioner to discuss this recommendation and he is agreeable to this approach.

Recommended Motion:

The Commission finds that the recall petition filed against Trempealeau County District Attorney Taavi McMahon contains 3,149 valid signatures and certifies the petition as sufficient. The Commission orders that a recall election be held in the municipalities of Trempealeau County on October 2, 2018 and that nomination papers for all candidates other than the incumbent must be filed in the office of the Wisconsin Elections Commission no later than 5 p.m. on September 4, 2018. The Commission further orders that if a recall primary is required for any ballot access party, the recall election shall be held on November 6, 2018, concurrent with the 2018 General Election. The Commission directs the Administrator to file and attach to the petition the Certificate of Sufficiency and Order attached to this Memorandum in accordance with Wis. Stat. § 9.10(3).

² For the same reasons § 8.50, Stats., provides that no special election may be held after February 1 preceding the spring election unless it is held on the same day as the spring election. However, delaying the recall election in this matter until the spring election would be an undue delay and not substantial compliance.

The recount statute does not violate due process or equal protection and does not deny the electorate the right to have the winning candidate hold office. The relationship of recount and quo warranto actions is discussed. *Shroble v. Prusener*, 185 Wis. 2d 103, 517 N.W.2d 169 (1994).

When the board of canvassers' actions in a recount reflected proper application of the statutes, the reviewing court's finding that the board had another option available to it was immaterial. *DeBroux v. City of Appleton Board of Canvassers*, 206 Wis. 2d 321, 557 N.W.2d 423 (Ct. App. 1996), 96–1287.

This section is the exclusive remedy for any claimed election fraud or irregularity. Generally, to successfully challenge an election, the challenger must show the probability of an altered outcome in the absence of the challenged irregularity. *Carlson v. Oconto County Board of Canvassers*, 2001 WI App 20, 240 Wis. 2d 438, 623 N.W.2d 195, 00–1788.

A party's failure to timely file an appeal under sub. (6) does not preclude the party from later intervening in another's appeal. To appeal under sub. (6) requires a party to be aggrieved. A party advocating a position that prevailed is not aggrieved. *Roth v. LaFarge School District Board of Canvassers*, 2001 WI App 221, 247 Wis. 2d 708, 634 N.W.2d 882, 01–0160.

The sub. (6) (a) requirement that a vote-recount appeal to the circuit court be served on the other candidates is fundamental. That a candidate who was not served knew about the appeal and sought and was permitted to intervene in an appeal of a recount was immaterial to the validity of that appeal. The command that "other candidates" be served with the appeal is mandatory rather than directory. *Logic v. City of South Milwaukee Board of Canvassers*, 2004 WI App 219, 277 Wis. 2d 421, 689 N.W.2d 692, 04–1642.

9.10 Recall. (1) RIGHT TO RECALL; PETITION SIGNATURES. (a) The qualified electors of the state, of any county, city, village, or town, of any congressional, legislative, judicial, town sanitary, or school district, or of any prosecutorial unit may petition for the recall of any incumbent elective official by filing a petition with the same official or agency with whom nomination papers or declarations of candidacy for the office are filed demanding the recall of the officeholder.

(b) Except as provided in par. (c), a petition for recall of an officer shall be signed by electors equal to at least 25 percent of the vote cast for the office of governor at the last election within the same district or territory as that of the officeholder being recalled.

(c) If no statistics are available to calculate the required number of signatures on a petition for recall of an officer, the number of signatures shall be determined as follows:

1. The area of the district in square miles shall be divided by the area of the municipality in square miles in which it lies.

2. The vote for governor at the last general election in the municipality within which the district lies shall be multiplied by 25 percent of the quotient determined under subd. 1. to determine the required number of signatures.

3. If a district is in more than one municipality, the method of determination under subds. 1. and 2. shall be used for each part of the district which constitutes only a fractional part of any area for which election statistics are kept.

(d) The official or agency with whom declarations of candidacy are filed for each office shall determine and certify to any interested person the number of signatures required on a recall petition for that office.

(2) PETITION REQUIREMENTS. (a) Every recall petition shall have on the face at the top in bold print the words "RECALL PETITION". Other requirements as to preparation and form of the petition shall be governed by s. 8.40.

(b) A recall petition for a city, village, town, town sanitary district, or school district office shall contain a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought.

(c) A petition requesting the recall of each elected officer shall be prepared and filed separately.

(d) No petition may be offered for filing for the recall of an officer unless the petitioner first files a registration statement under s. 11.0902 with the filing officer with whom the petition is filed. The petitioner shall append to the registration a statement indicating his or her intent to circulate a recall petition, the name of the officer for whom recall is sought and, in the case of a petition for the recall of a city, village, town, town sanitary district, or school district officer, a statement of a reason for the recall which is related to the official responsibilities of the official for whom removal is sought. No petitioner may circulate a petition for the recall of an officer prior to completing registration. The last date

that a petition for the recall of an officer may be offered for filing is 5 p.m. on the 60th day commencing after registration. After the recall petition has been offered for filing, no name may be added or removed. No signature may be counted unless the date of the signature is within the period provided in this paragraph.

(e) An individual signature on a petition sheet may not be counted if:

1. The signature is not dated.

2. The signature is dated outside the circulation period.

3. The signature is dated after the date of the certification contained on the petition sheet.

4. The residency of the signer of the petition sheet cannot be determined by the address given.

5. The signature is that of an individual who is not a resident of the jurisdiction or district from which the elective official being recalled is elected.

6. The signer has been adjudicated not to be a qualified elector on grounds of incompetency or limited incompetency as provided in s. 6.03 (3).

7. The signer is not a qualified elector by reason of age.

8. The circulator knew or should have known that the signer, for any other reason, was not a qualified elector.

(em) No signature on a petition sheet may be counted if:

1. The circulator fails to sign the certification of circulator.

2. The circulator is not a qualified circulator.

(f) The filing officer or agency shall review a verified challenge to a recall petition if it is made prior to certification.

(g) The burden of proof for any challenge rests with the individual bringing the challenge.

(h) Any challenge to the validity of signatures on the petition shall be presented by affidavit or other supporting evidence demonstrating a failure to comply with statutory requirements.

(i) If a challenger can establish that a person signed the recall petition more than once, the 2nd and subsequent signatures may not be counted.

(j) If a challenger demonstrates that someone other than the elector signed for the elector, the signature may not be counted, unless the elector is unable to sign due to physical disability and authorized another individual to sign in his or her behalf.

(k) If a challenger demonstrates that the date of a signature is altered and the alteration changes the validity of the signature, the signature may not be counted.

(L) If a challenger establishes that an individual is ineligible to sign the petition, the signature may not be counted.

(m) No signature may be stricken on the basis that the elector was not aware of the purpose of the petition, unless the purpose was misrepresented by the circulator.

(n) No signature may be stricken if the circulator fails to date the certification of circulator.

(p) If a signature on a petition sheet is crossed out by the petitioner before the sheet is offered for filing, the elimination of the signature does not affect the validity of other signatures on the petition sheet.

(q) Challenges are not limited to the categories set forth in pars. (i) to (L).

(r) A petitioner may file affidavits or other proof correcting insufficiencies, including but not limited to:

4. Failure of the circulator to sign the certification of circulator.

5. Failure of the circulator to include all necessary information.

(s) No petition for recall of an officer may be offered for filing prior to the expiration of one year after commencement of the term of office for which the officer is elected.

(3) STATE, COUNTY, CONGRESSIONAL, LEGISLATIVE AND JUDICIAL OFFICES. (a) This subsection applies to the recall of all elective officials other than city, village, town, town sanitary district, and

school district officials. City, village, town, town sanitary district, and school district officials are recalled under sub. (4).

(b) Within 10 days after the petition is offered for filing, the officer against whom the petition is filed may file a written challenge with the official, specifying any alleged insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the challenge with the official within 5 days after the challenge is filed. If a rebuttal is filed, the officer against whom the petition is filed may file a reply to any new matter raised in the rebuttal within 2 days after the rebuttal is filed. Within 14 days after the expiration of the time allowed for filing a reply to a rebuttal, the official shall file the certificate or an amended certificate. Within 31 days after the petition is offered for filing, the official with whom the petition is offered for filing shall determine by careful examination whether the petition on its face is sufficient and so state in a certificate attached to the petition. If the official finds that the amended petition is sufficient, the official shall file the petition and call a recall election to be held on the Tuesday of the 6th week commencing after the date of filing of the petition. If Tuesday is a legal holiday, the recall election shall be held on the first day after Tuesday which is not a legal holiday. If the official finds that the petition is insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 5 days after the offering of the amended petition for filing, the official with whom the petition is filed shall again carefully examine the face of the petition to determine sufficiency and shall attach a certificate stating the findings. Upon showing of good cause, the circuit court for the county in which the petition is offered for filing may grant an extension of any of the time periods provided in this paragraph.

(bm) Within 7 days after an official makes a final determination of sufficiency or insufficiency of a recall petition under par. (b), the petitioner or the officer against whom the recall petition is filed may file a petition for a writ of mandamus or prohibition with the circuit court for the county where the recall petition is offered for filing. Upon filing of such a petition, the only matter before the court shall be whether the recall petition is sufficient. The court may stay the effect of the official's order while the petition is under advisement and may order the official to revise the election schedule contained in the order if a revised schedule is necessitated by judicial review. Whenever the recall petitioner files a petition under this paragraph, the officer against whom the recall petition is filed shall be a party to the proceeding. The court shall give the matter precedence over other matters not accorded similar precedence by law.

(c) The official against whom the recall petition is filed shall be a candidate at the recall election without nomination unless the official resigns within 10 days after the original filing of the petition. Candidates for the office may be nominated under the usual procedure of nomination for a special election by filing nomination papers not later than 5 p.m. on the 4th Tuesday preceding the election and have their names placed on the ballot at the recall election.

(d) If more than 2 persons compete for a nonpartisan office, a recall primary shall be held. The names of the 2 persons receiving the highest number of votes in the recall primary shall be certified to appear on the ballot in the recall election, but if any person receives a majority of the total number of votes cast in the recall primary, a recall election shall not be held. If the incumbent receives a majority of the votes cast, the incumbent shall be retained in office for the remainder of the term. If another candidate receives a majority of the votes cast, that candidate shall be elected to serve for the residue of the unexpired term of the incumbent. Write-in votes are permitted only at a recall primary or at a recall election in which no primary is held.

(e) For any partisan office, a recall primary shall be held for each political party which is entitled to a separate ballot under s. 5.62 (1) (b) or (2) and from which more than one candidate competes for the party's nomination in the recall election. The primary

ballot shall be prepared in accordance with s. 5.62, insofar as applicable. The person receiving the highest number of votes in the recall primary for each political party shall be that party's candidate in the recall election. Independent candidates shall be shown on the ballot for the recall election only.

(f) If a recall primary is required, the date specified under par. (b) shall be the date of the recall primary and the recall election shall be held on the Tuesday of the 4th week commencing after the recall primary or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.

(4) CITY, VILLAGE, TOWN, TOWN SANITARY DISTRICT, AND SCHOOL DISTRICT OFFICES. (a) Within 10 days after a petition for the recall of a city, village, town, town sanitary district, or school district official, is offered for filing, the officer against whom the petition is filed may file a written challenge with the municipal clerk or board of election commissioners or school district clerk with whom it is filed, specifying any alleged insufficiency. If a challenge is filed, the petitioner may file a written rebuttal to the challenge with the clerk or board of election commissioners within 5 days after the challenge is filed. If a rebuttal is filed, the officer against whom the petition is filed may file a reply to any new matter raised in the rebuttal within 2 days after the rebuttal is filed. Within 14 days after the expiration of the time allowed for filing a reply to a rebuttal, the clerk or board of election commissioners shall file the certificate or an amended certificate. Within 31 days after the petition is offered for filing, the clerk or board of election commissioners shall determine by careful examination of the face of the petition whether the petition is sufficient and shall so state in a certificate attached to the petition. If the petition is found to be insufficient, the certificate shall state the particulars creating the insufficiency. The petition may be amended to correct any insufficiency within 5 days following the affixing of the original certificate. Within 2 days after the offering of the amended petition for filing, the clerk or board of election commissioners shall again carefully examine the face of the petition to determine sufficiency and shall attach to the petition a certificate stating the findings. Immediately upon finding an original or amended petition sufficient, except in cities over 500,000 population, the municipal clerk or school district clerk shall transmit the petition to the governing body or to the school board. Immediately upon finding an original or amended petition sufficient, in cities over 500,000 population, the board of election commissioners shall file the petition in its office.

(d) Promptly upon receipt of a certificate under par. (a), the governing body, school board, or board of election commissioners shall call a recall election. The recall election shall be held on the Tuesday of the 6th week commencing after the date on which the certificate is filed, except that if Tuesday is a legal holiday the recall election shall be held on the first day after Tuesday which is not a legal holiday.

(e) The official against whom the recall petition is filed shall be a candidate at the recall election without nomination unless the official resigns within 10 days after the date of the certificate. Candidates for the office may be nominated under the usual procedure of nomination for a special election by filing nomination papers or declarations of candidacy not later than 5 p.m. on the 4th Tuesday preceding the election and have their names placed on the ballot at the recall election.

(f) If more than 2 persons compete for an office, a recall primary shall be held. The names of the 2 persons receiving the highest number of votes in the recall primary shall be certified to appear on the ballot in the recall election, but if any person receives a majority of the total number of votes cast in the recall primary, a recall election shall not be held. If the incumbent receives a majority of the votes cast, the incumbent shall be retained in office for the remainder of the term. If another candidate receives a majority of the votes cast, that candidate shall be elected to serve for the residue of the unexpired term of the incumbent. Write-in votes are permitted only at a recall primary or at a recall election in which no primary is held.

(g) If a recall primary is required, the date specified under par. (d) shall be the date of the recall primary and the recall election shall be held on the Tuesday of the 4th week commencing after the recall primary or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.

(h) All candidates for any village, town, and town sanitary district office, other than the official against whom the recall petition is filed, shall file nomination papers, regardless of the method of nomination of candidates for town or village office under s. 8.05.

(5) VOTING METHOD; ELECTION RESULTS. (a) The recall primary or election of more than one official may be held on the same day. If more than one official of the same office designation elected at large for the same term from the same district or territory is the subject of a recall petition, there shall be a separate election contest for the position held by each official. Candidates shall designate which position they are seeking on their nomination papers. Instructions shall appear on the ballot to electors to vote for each position separately.

(b) The official against whom a recall petition has been filed shall continue to perform the duties of his or her office until a certificate of election is issued to his or her successor. The person receiving a plurality of votes at the recall election or a majority of votes at a primary when authorized under sub. (3) (d) or (4) (f) shall be declared elected for the remainder of the term. If the incumbent receives the required number of votes he or she shall continue in office. Except as provided in sub. (4) (f), if another person receives the required number of votes that person shall succeed the incumbent if he or she qualifies within 10 days after receiving a certificate of election.

(6) LIMITATION ON RECALL ELECTIONS. After one recall petition and recall election, no further recall petition may be filed against the same official during the term for which he or she was elected.

(7) PURPOSE. The purpose of this section is to facilitate the operation of article XIII, section 12, of the constitution and to extend the same rights to electors of cities, villages, towns, town sanitary districts, and school districts.

History: 1977 c. 187 s. 134; 1977 c. 403, 447; 1979 c. 260; 1983 a. 219, 491, 538; 1985 a. 304; 1987 a. 391; 1989 a. 31, 192; 1991 a. 269, 315; 1999 a. 182; 2001 a. 109; 2005 a. 451; 2007 a. 56; 2015 a. 117.

Cross-reference: See also ss. EL 2.09, 2.11, and 6.04, Wis. adm. code.

Striking an entire page of signatures for one invalid signature violated the electorate's right to recall. *Stahovic v. Rajchel*, 122 Wis. 2d 370, 363 N.W.2d 243 (Ct. App. 1984).

This section applies to members of Congress. 68 Atty. Gen. 140.

9.20 Direct legislation. (1) A number of electors equal to at least 15 percent of the votes cast for governor at the last general election in their city or village may sign and file a petition with the city or village clerk requesting that an attached proposed ordinance or resolution, without alteration, either be adopted by the common council or village board or be referred to a vote of the electors. The individual filing the petition on behalf of the electors shall designate in writing an individual to be notified of any insufficiency or improper form under sub. (3).

(2) The preparation and form of the direct legislation petition shall be governed by s. 8.40.

(2m) After the petition has been offered for filing, no name may be erased or removed. No signature may be considered valid or counted unless the date is less than 60 days before the date offered for filing.

(3) Within 15 days after the petition is filed, the clerk shall determine by careful examination whether the petition is sufficient and whether the proposed ordinance or resolution is in proper form. The clerk shall state his or her findings in a signed and dated certificate attached to the petition. If the petition is found to be insufficient or the proposed ordinance or resolution is not in proper form, the certificate shall give the particulars, stating the insufficiency or improper form. The petition may be amended to correct any insufficiency or the proposed ordinance or resolution may be put in proper form within 10 days following the affixing of the original certificate and notification of the individual des-

ignated under sub. (1). When the original or amended petition is found to be sufficient and the original or amended ordinance or resolution is in proper form, the clerk shall so state on the attached certificate and forward it to the common council or village board immediately.

(4) The common council or village board shall, without alteration, either pass the ordinance or resolution within 30 days following the date of the clerk's final certificate, or submit it to the electors at the next spring or general election, if the election is more than 70 days after the date of the council's or board's action on the petition or the expiration of the 30-day period, whichever first occurs. If there are 70 days or less before the election, the ordinance or resolution shall be voted on at the next election thereafter. The council or board by a three-fourths vote of the members-elect may order a special election for the purpose of voting on the ordinance or resolution at any time prior to the next election, but not more than one special election for direct legislation may be ordered in any 6-month period.

(5) The clerk shall cause notice of the ordinance or resolution that is being submitted to a vote to be given as provided in s. 10.06 (3) (f).

(6) The ordinance or resolution need not be printed in its entirety on the ballot, but a concise statement of its nature shall be printed together with a question permitting the elector to indicate approval or disapproval of its adoption.

(7) If a majority vote in favor of adoption, the proposed ordinance or resolution shall take effect upon publication under sub. (5). Publication shall be made within 10 days after the election.

(8) City ordinances or resolutions adopted under this section shall not be subject to the veto power of the mayor and city or village ordinances or resolutions adopted under this section shall not be repealed or amended within 2 years of adoption except by a vote of the electors. The common council or village board may submit a proposition to repeal or amend the ordinance or resolution at any election.

History: 1977 c. 102; 1983 a. 484; 1989 a. 192, 273; 2015 a. 37.

This section implements legislative powers reserved by the people. Subject to certain conditions, a common council has no authority to make an initial judgment of the constitutionality or validity of proposed direct legislation. *State ex rel. Althouse v. Madison*, 79 Wis. 2d 97, 255 N.W.2d 449 (1977).

A proposal that is administrative, rather than legislative in character, is not the proper subject of initiative proceedings. *State ex rel. Becker v. City of Milwaukee Common Council*, 101 Wis. 2d 680, 305 N.W.2d 178 (Ct. App. 1981).

A city clerk has a mandatory duty to forward to the common council a sufficient petition and ordinance in proper form. *State ex rel. North v. Goetz*, 116 Wis. 2d 239, 342 N.W.2d 747 (Ct. App. 1983).

The power of initiative does not extend to legislative decisions that have already been made by the legislative body. *Schaefer v. Potosi Village Board*, 177 Wis. 2d 287, 501 N.W.2d 901 (Ct. App. 1993).

If statutes establish procedures for the accomplishment of legislation in a certain area, an initiative may not effect legislation that would modify the statutory directives that would bind a municipality if it were legislating in the same area. Section 62.23 establishes such procedures for zoning; zoning may not be legislated or modified by initiative. An ordinance constituting a pervasive regulation of, or prohibition on, the use of land is zoning. *Hcitman v. City of Mauston*, 226 Wis. 2d 542, 595 N.W.2d 450 (Ct. App. 1999), 98–3133.

There are 4 exceptions to the sub. (4) requirement that requested direct legislation be either passed or submitted to the electors: 1) when the proposed direct legislation involves executive or administrative matters, rather than legislative ones; 2) when it compels the repeal of an existing ordinance, or compels the passage of an ordinance in clear conflict with existing ordinances; 3) when it seeks to exercise legislative powers not conferred on a municipality; and 4) when it would modify statutorily prescribed directives that would bind a municipality if it were attempting to legislate in the same area. *Mount Horeb Community Alert v. Village Board of Mt. Horeb*, 2002 WI App 80, 252 Wis. 2d 713, 643 N.W.2d 186, 01–2217.

Mandamus is the appropriate action when a city council refuses either option of sub. (1) *Mount Horeb Community Alert v. Village Board of Mt. Horeb*, 2002 WI App 80, 252 Wis. 2d 713, 643 N.W.2d 186, 01–2217.

A proposed ordinance, initiated by a group of citizens, to require a village to hold a binding referendum prior to the start of construction on any new village building project requiring a capital expenditure of \$1 million or more was an appropriate subject of direct legislation. *Mount Horeb Community Alert v. Village Board of Mt. Horeb*, 2003 WI 100, 263 Wis. 2d 544, 665 N.W.2d 229, 01–2217.

Section 893.80 (1) (b), which requires the filing of a notice of claim before an action may be commenced against a municipality, did not apply to an action for mandamus seeking to compel a city council to comply with this section. *Oak Creek Citizen's Action Committee v. City of Oak Creek*, 2007 WI App 196, 304 Wis. 2d 702; 738 N.W.2d 168, 06–2697.

A "concise statement" under sub. (6), properly construed, means a brief statement of the general purpose of the proposed ordinance. It is not required that the ballot must contain every essential element of the proposed ordinance. *Metropolitan Mil-*

**STATE OF WISCONSIN
WISCONSIN ELECTIONS COMMISSION**

IN THE MATTER OF THE RECALL OF TAAVI MCMAHON, DISTRICT
ATTORNEY FOR TREMPEALEAU COUNTY, WISCONSIN

CERTIFICATE OF SUFFICIENCY AND ORDER

I, Meagan Wolfe, Interim Administrator of the Wisconsin Elections Commission (“Commission”), pursuant to §9.10(3)(b) of the Wisconsin Statutes, certify that:

1. On July 23, 2018, a petition to recall District Attorney Taavi McMahon, from the office of Trempealeau County District Attorney, was offered for filing with the Commission pursuant to Article XIII, Section 12 of the Wisconsin Constitution and §9.10 of the Wisconsin Statutes.
2. A minimum of 2,683 signatures of qualified electors in Trempealeau County, Wisconsin are required for the Commission to certify the petition and order a recall election pursuant to §9.10(3)(b) of the Wisconsin Statutes.
3. On August 22, 2018, I filed the petition with the Wisconsin Elections Commission and based upon the Commission staff’s review, have determined that the petition contains 3,149 qualifying signatures of electors of Trempealeau County, Wisconsin. On August 22, 2018, the Commission held a public meeting to review the staff examination of the recall petition.
4. Based on a careful examination of the recall petition conducted by the Commission, the Commission found that the petition to recall District Attorney Taavi McMahon contained 3,149 qualifying signatures of electors of Trempealeau County, Wisconsin and, based on that finding, certified that the petition is sufficient to recall District Attorney Taavi McMahon and order a recall election.
5. The Commission hereby files the petition pursuant to Wis. Stat. §9.10(3)(b), and a recall election is ordered this 22nd day of August, 2018.
6. The recall election shall be held on Tuesday, October 2, 2018. If a primary is necessary, the primary shall be held on that date and the recall election shall be held on Tuesday, November 6, 2018.
7. Persons seeking nomination for the recall election may circulate nomination papers immediately upon issuance of this order and shall file nomination papers containing not less than 200 nor more than 400 signatures of qualified electors of Trempealeau County, Wisconsin, no later than 5:00 p.m., on Tuesday, September 4, 2018, in the offices of the

Wisconsin Elections Commission, located at 212 E. Washington Avenue, Third Floor, Madison, Wisconsin. Wis. Stat. §§ 8.15(6)(dm), 9.10(3)(c).

8. Taavi McMahon shall be a candidate at the recall election without nomination unless he resigns from office not later than September 1, 2018.

Dated this 22nd day of August, 2018 at Madison, Wisconsin

WISCONSIN ELECTIONS COMMISSION

Meagan Wolfe
Interim Administrator

WISCONSIN ELECTIONS COMMISSION

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INTERIM ADMINISTRATOR MEAGAN WOLFE

DATE: For the August 22, 2018 Commission Meeting

TO: Members, Elections Commission

FROM: Meagan Wolfe
Interim Administrator, Wisconsin Elections Commission

Prepared and Presented by:
Sharrie Hauge, Chief Administrative Officer

SUBJECT: 2019 – 21 Biennial Budget Process Update/Request

Commission staff is in the midst of preparing the agency's 2019-21 Biennial Budget submission, which is due on September 17, 2018. The biennial budget process is designed to maintain the agency's general program revenue (GPR) funded operations and federal spending authority for the biennium. The 2019-21 biennium begins on July 1, 2019 and runs through June 30, 2021. This memorandum provides an overview of the budget process and outlines the staff's recommendations for submitting the budget request.

Overview and Budget Process

In preparation, before the development of individual budget decision item requests can be made, several technical budget tasks need to be completed. Staff has completed the base year reconciliation which ensures that agency program and appropriation structures that are defined in the budget system correctly reflect current law. The goal of the base reconciliation is to obtain a level of funding and positions for each current law appropriation program which is approximated by what is available as of July 1 at the start of the second year of the biennium (July 1, 2018). All agency spending requests are built on (or are changes to) the adjusted base funding level.

The WEC's total base budget for fiscal year 2019 after completion of the base year reconciliation is \$5,643,500. The total adjusted base budget consists of the following spending authority:

General Purpose Revenue (GPR) funds	\$4,591,700
Federal HAVA funds (SEG-F)	\$1,050,100
Program Revenue (PR) funds	<u>\$ 1,700</u>
Total Spending Authority	\$5,643,500

The WEC's program revenue primarily results from federal aid for the Wisconsin Elections Security grant and includes a small amount of funds collected for providing other agency records under the Public Records Law.

Currently, staff is working on completing a full salary and fringe benefit funding calculation under standard budget adjustments to determine salary and wage levels. After the reconciliation process is complete the agency budget request decision items can be developed.

Summary of Recommended Decision Items

The State's budget process requires agencies to identify Decision Items reflecting any proposed change from the base budget as determined by the Department of Administration. In addition to the primary Decision Item related to continuing the agency's base operations, staff is recommending two new Decision Items, which are 1) funding for Electronic Registration Information Center (ERIC) membership dues, required mailings and WisVote modifications and 2) increase funding for the Four-Year Voter Maintenance process. The Decision Items, including the staff's recommended motions, are outlined below.

1. ERIC Membership Dues, Mailings and WisVote modifications

Wis. Stat. §6.36(1)(ae)1,2 requires the Wisconsin Elections Commission to join the Electronic Registration Information Center (ERIC). ERIC is a consortium of states that shares data to improve the quality of voter registration databases. Member states pay annual membership dues and agree to share their driver license and voter registration databases. The data from all states is compared and member states are provided reports to identify voters who may have moved, voters who may have died, duplicate voter records, and voters who appear to be eligible to vote but are not registered.

The ERIC membership agreement requires states to perform an annual list maintenance for voters who are identified by ERIC as having potentially moved. These voters are mailed a first-class postcard notifying them to update their voter registration.

The ERIC membership agreement also requires member states to contact voters who have been identified by ERIC as being eligible to vote but are not yet registered to vote. This mailing must be done once every two years, ahead of the fall General Election.

ERIC also provides lists of voters who may have duplicate voter records within the state's voter registration system, and voters who may have died based on the federal Social Security death master list. Wisconsin's voter registration system, WisVote, includes features to help clerks update records of voters who have died and to clean up duplicate records, but data from ERIC will add considerable value to this process. Commission staff will need to make modifications to WisVote to allow for importing the ERIC data for duplicate and deceased voters to allow clerks to make these corrections.

Costs requested for ERIC are as follows:

Item	FY20	FY21	TOTAL for FY20 & FY21
ERIC Membership Dues	\$ 33,100	\$ 33,100	\$ 66,200
Movers Mailing	\$ 141,300	\$ 141,300	\$ 282,600
Eligible but Unregistered Mailing	\$ 81,300	\$ -	\$ 81,300
Importing Duplicate and Deceased Data*	\$ 22,500	\$ -	\$ 22,500
TOTAL COST	\$ 278,200	\$ 174,400	\$ 452,600

* One Time Funding

2. Increase in Funding for the Four-Year Voter Maintenance Process

Currently, the agency’s base budget for Four-Year Voter Maintenance is \$30,000 to conduct the legislatively required Four-Year Voter Maintenance process. Wisconsin Statute §6.50(1) directs the Elections Commission to examine voter registration records for each municipality and identify each qualified elector who has not voted within the previous four years, and then mail a Notice of Suspension of Registration to the elector no later than June 15 following each general election. This process of updating the registration list is commonly referred to as “four-year maintenance,” and state statutes require that the audit and mailing be completed every two years.

The current \$30,000 cost was based on the printing and mailing of the four-year maintenance following the 2014 General Election. However, in 2017 following the 2016 Election the cost was \$104,000 which is more in-line with 2008, 2010 and 2012 expenditures. The average cost excluding 2014 is \$82,000. Since staff has not had the opportunity to accurately determine the number of post cards, the cost of printing and postage, we are not able to provide a definitive cost increase but request permission to add this as a budget item to be included in the 2019-21 biennial budget submission.

Finally, as part of the budget process, agencies are also required by 2015 Act 201 to include a plan for how the agency will meet the zero-growth target for each fiscal year of the 2019-21 biennium, and how to reduce the agency’s state operations budget by 5 percent from its fiscal year 2018-19 adjusted base in each fiscal year of the 2019-21 biennium. Agencies are also required to report on performance measures from previous biennial budgets. For the 2019-21 budget agencies are required to report actual outcome measures through fiscal year 2016-17 and fiscal year 2017-18.

Base budget review reports are a new requirement in the budget policies this biennium. Agencies are required to submit a base budget review report with its 2019-21 Biennial Budget submission and then again by May 15 in every even-numbered year in every biennium thereafter. The report includes: a description of each agency appropriation (WEC currently has 13); an accounting of all expenditures in every quarter in each of the previous 3 fiscal years; an analysis of where the appropriations contribute to the mission of the agency and whether the objectives of the appropriation justify our expenditures; a determination of the minimum level of funding needed to achieve the appropriation’s funding and not to exceed the prior fiscal year’s adjusted base and an accounting of the appropriation’s current funding; and a description of our agency mission or guiding principles.

Recommended Motions:

- 1) Approve the overall approach of submitting a budget request for 2019-21 which continues current agency operations.
- 2) The Commission directs staff to request funding for Electronic Registration Information Center (ERIC) membership dues, required mailings and WisVote modifications. \$278,200 GPR in FY20 and \$174,400 GPR in FY21.
- 3) The Commission directs staff to request additional funding for the Four-Year Voter Maintenance process.