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Wisconsin Elections Commission

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Meeting of the Commission  
Tuesday, September 26, 2017  
10:00 A.M.

Agenda  
Open Session

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

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<b>A. Call to Order</b>	
<b>B. Administrator’s Report of Appropriate Meeting Notice</b>	
<b>C. Personal Appearances (Time reserved for personal appearances may be limited at the discretion of the Chair)</b>	
<b>D. Minutes of Previous Meeting – May 23, 2017</b>	<b>3</b>
<b>-- June 20, 2017</b>	<b>9</b>
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<b>Q.</b>	<b>Commission Staff Update</b>	<b>109</b>
<b>R.</b>	<b>Per Diem Authorization</b>	
<b>S.</b>	<b>Closed Session</b>	

**1. Litigation Update**

- |               |  |
|---------------|--|
| 19.85 (1) (g) | The Commission may confer with legal counsel concerning litigation strategy.   |
| 19.851        | The Commission's deliberations concerning investigations of any violation of the election laws shall be in closed session. |

# WISCONSIN ELECTIONS COMMISSION

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COMMISSIONERS

BEVERLY R. GILL  
JULIE M. GLANCEY  
ANN S. JACOBS  
JODI JENSEN  
STEVE KING  
MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

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**Wisconsin Elections Commission**  
Wisconsin Elections Commission Offices  
212 E. Washington Avenue, Third Floor  
Madison, Wisconsin  
10:00 a.m. Wednesday, May 23, 2017

## Open Session Minutes

Present: Commissioner Mark Thomsen, Commissioner Jodi Jensen and Commissioner Ann Jacobs (all in person); and Commissioner Beverly Gill, Commissioner Julie Glancey and Commissioner Steve King (all by telephone)

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

### **A. Call to Order**

Commission Chair Mark Thomsen called the meeting to order at 10:00 a.m.

### **B. Administrator's Report of Appropriate Meeting Notice**

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

### **C. Minutes of Previous Meetings**

- 1. March 8, 2017 Teleconference Meeting**
- 2. March 14, 2017 Regular Meeting**

**MOTION:** Approve minutes of the March 8 and March 14, 2017 Wisconsin Elections Commission meetings as submitted. Moved by Commissioner Jensen, seconded by Commissioner Jacobs. Motion carried unanimously.

### **D. Personal Appearances**

There were no personal appearances.

## E. Administrative Rules

Legal Counsel Nathan Judnic made an oral presentation based on a memorandum starting on page 15 of the May 23 meeting materials. The memorandum provided an overview of the status of administrative rules that require the Commission's action. The rules are categorized in five groups.

### 1. Statements of Scope Submitted to the Governor's Office for Approval

- EL Ch. 4 (election observers)
- EL Ch. 3.60 (absentee ballot subscription service)
- EL Ch. 13 (training for election inspectors and special voting deputies)
- EL Ch. 6.06 (curbside voting procedures)

Mr. Judnic reported that on May 5 the Governor approved the scope statements for these four proposed rules, which were published in the Administrative Register on May 22. Staff will ask the Commission for approval on June 20 to begin drafting the rules for Commission action at the September 2017 meeting. Commissioners and staff briefly discussed the rules and their history. No Commission action is required at this time.

### 2. Notice of Proposed Rulemaking

- EL Ch. 6 (sufficiency of the EthCF-1 form and submission of documents by email)
- EL Ch 21 (written advice – repeal)

Mr. Judnic directed Commissioners to the memorandum on page 51 of the meeting materials regarding notices of proposed rulemaking. Both proposed actions deal with rules that were transferred from the Government Accountability Board to the Commission. Commissioners and staff discussed the proposed rulemaking and the timeline for submission to the rules clearinghouse, which will be as soon as possible following this meeting.

**MOTION:** Approve the “Proposed Rulemaking Order” and “Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse” included in the May 23, 2017 meeting materials for EL Ch. 6, and direct the Commission staff to submit the required notice and other required documents to the Legislative Reference Bureau, the Secretary of the Department of Administration and the Legislative Council Rules Clearinghouse to continue the promulgation of this rule. Moved by Commissioner King, seconded by Commissioner Glancey. Motion carried unanimously.

**MOTION:** Approve the “Proposed Rulemaking Order” and “Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse” included in the May 23, 2017 meeting materials for EL Ch. 21, and direct the Commission staff to submit the required notice and other required documents to the Legislative Reference Bureau, the

Secretary of the Department of Administration and the Legislative Council Rules Clearinghouse to continue the repeal of this rule. Moved by Commissioner Jacobs, seconded by Commissioner Gill. Motion carried unanimously.

### **3. Request for Permission to Draft Statements of Scope and Submission to Governor's Office**

- EL Ch. 5 and 7 (combine and revise electronic voting security and voting equipment approval chapters)
- EL Ch.12 (responsibilities of clerks to maintain records in WisVote)
- EL Ch. 20 (complaint procedure)

Mr. Judnic directed Commissioners to the memorandum on page 73 of the meeting materials regarding EL Chapters 5 and 7 on ballot and electronic voting equipment and approval for electronic voting equipment. He said staff's recommendation is to combine the two rules into a single chapter, which will help streamline approval. Commissioners and staff discussed the proposed rulemaking and timeline for approval. Mr. Haas said staff hopes to draft the scope statement and submit it to the Governor and publish before the September 2017 meeting.

**MOTION:** Direct staff to draft a Statement of Scope for EL Chapter 7 on Ballot and Electronic Voting Equipment Security and the Approval of Electronic Voting Equipment and submit the Statement of Scope to the Governor's Office for approval. Moved by Commissioner Jensen, seconded by Commissioner Jacobs. Motion carried unanimously.

Mr. Judnic directed Commissioners to the memorandum on page 75 of the meeting materials regarding certification and training of municipal clerks. The proposed rule will outline the responsibilities of clerks in maintaining records in the statewide voter registration system. Commissioners and staff discussed the proposed rulemaking.

**MOTION:** Direct staff to draft a Statement of Scope to amend EL Ch. 12 to formalize procedures for local election officials to maintain voter records in WisVote, and submit the Statement of Scope to the Governor's Office for approval. Moved by Commissioner Gill, seconded by Commissioner Jacobs. Motion carried unanimously.

Mr. Judnic directed Commissioners to the memorandum on page 79 of the meeting materials regarding complaint procedures. Staff recommends amending the rule to make it clearer that the procedures apply only to complaints filed against local election officials. Commissioners and staff discussed the proposed rulemaking.

**MOTION:** Direct staff to draft a Statement of Scope to amend EL Ch. 20 to provide the procedures for complaints filed under Wis. Stat. § 5.06, and submit the Statement of

Scope to the Governor's Office for approval. Moved by Commissioner King, seconded by Commissioner Jensen. Motion carried unanimously.

#### **4. Rules the Commission Staff Believe Should Be Placed on Hold Pending the *One Wisconsin* Appeal**

- Ch. EL 3.10, 3.11, 3.12 and 3.20 (special registration deputies)

Mr. Judnic directed Commissioners to the memorandum on page 85 of the meeting materials regarding possible changes to Ch. EL 3 to remove references to special registration deputies, which were eliminated through the repeal of Wis. Stat. § 6.26, effective in January 2017 with the advent of online voter registration. The elimination of special registration deputies has been challenged in the *One Wisconsin* case now before the 7<sup>th</sup> Circuit Court of Appeals. Staff recommends delaying action to amend the administrative rules until the litigation is resolved.

**MOTION:** Direct staff to take no action on amending EL 3.10, 3.11, 3.12 or 3.20 until the *One Wisconsin* litigation has been resolved. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

#### **5. Legislation Sought in Lieu of Rulemaking**

Mr. Judnic directed Commissioners to the memorandum on page 87 of the meeting materials regarding possible administrative rule changes that could be accomplished through legislation. These subjects include election notices, electronic proof of residence, absentee voting procedure for overseas voting, requiring provision of certain information by Election Day registration applicants, and definition of "same grounds" related to absentee voting in retirement homes and adult care facilities. Staff has been in contact with staff from Representative Bernier's office, and has been assured that legislation will be drafted and introduced to address the topic areas outlined in the memorandum. Commissioners and staff discussed the issues. No action was required.

#### **F. IT Contracted Services**

Assistant Administrator Meagan Wolfe made an oral presentation based on a memorandum starting on page 89 of the May 23 meeting materials. Staff requests Commission approval of contracts for the agency's contracted IT developers. Commissioners and staff discussed the contracts and the many critical projects the IT developers work on.

**MOTION:** Approve the execution of one, three-year IT contract for the Systems Architect-1 position, not to exceed \$180,000 annually. Moved by Commissioner Glancey, seconded by Commissioner King. Motion carried unanimously.

**MOTION:** Authorize the continuation of IT contracts in FY 18 for the WEC's remaining two IT contract positions. Moved by Commissioner Jensen, seconded by Commissioner Jacobs. Motion carried unanimously.

## **G. Administrator's Report**

Administrator Haas reported that the Joint Committee on Finance has approved five of the six positions not included in the Governor's budget. Three new employees have joined the staff recently and will be introduced at the Commission's June meeting. He said staff has consulted with the Department of Administration and will begin recruitment for the five positions recommended for approval by Joint Finance.

Administrator Haas asked Commissioners whether they wished to authorize a per diem payment for this meeting.

**MOTION:** Authorize payment of one half day of per diem for the May 23, 2017 meeting. Moved by Commissioner Jacobs, seconded by Commissioner King. Motion carried unanimously.

Chair Thomsen congratulated Commissioner Gill and Commissioner Glancey on their confirmation by the Wisconsin State Senate. He also discussed agenda items for the Commission's June 20 meeting.

## **H. Closed Session**

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

**MOTION:** Move to closed session pursuant to § 19.85(1)(g) to confer with counsel concerning pending litigation. Moved by Commissioner Jacobs, seconded by Commissioner Jensen.

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

Motion carried unanimously. The Commission recessed at 11:17 a.m. and convened in closed session at 11:28 a.m.

## **F. Adjourn**

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

The Commission adjourned at 12:33 p.m.

####

The next regular meeting of the Wisconsin Elections Commission is scheduled for Tuesday, June 20, 2017, at the commission's offices in Madison, Wisconsin beginning at 10:00 a.m.

May 23, 2017 Wisconsin Elections Commission meeting minutes prepared by:

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Reid Magney, Public Information Officer

May 30, 2017

May 23, 2017 Wisconsin Elections Commission meeting minutes certified by:

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Beverly Gill, Commission Secretary

June 20, 2017

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**Wisconsin Elections Commission**  
Wisconsin Elections Commission Offices  
212 E. Washington Avenue, Third Floor  
Madison, Wisconsin  
10:00 a.m. Tuesday, June 20, 2017

## Open Session Minutes

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

Not Present: Commissioner Steve King

Staff present: Michael Haas, Meagan Wolfe, Nathan Judnic, Sharrie Hauge, Reid Magney, Ann Oberle, Sarah Whitt, Richard Rydecki, Sara Linski

### **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.

### **C. Personal Appearances**

**Justin Schmit of Green Bay** appeared on behalf of Brown County Clerk Sandy Juno to speak in support of having Wisconsin Elections Commission staff develop an e-poll book system for the state.

**Dane County Clerk Scott McDonell** appeared to speak in support of WEC staff developing an e-poll book system for the state. He said Dane County is happy with a vendor-provided voting system, but he believes that the county would be happier with an e-poll book system developed by the state at a lower cost.

**Paul Malischke of Madison** appeared on his own behalf to urge the Commissioners to address issues raised by the Federal Voting Assistance Program regarding expanding the state's definition of military and overseas voters to include overseas voters with the intent to return to

the United States. He also urged the Commission to publish e-poll book standards and let the public comment on them.

## **D. Minutes of Previous Meetings**

### **May 23, 2017**

Chair Thomsen asked that sections of the minutes dealing with administrative rules contain information about the dates when certain actions will be completed so Commissioners can track the staff's progress. Staff will correct the draft minutes and submit them for approval at the next Commission meeting.

## **E. Voter Registration and Four-Year List Maintenance**

WisVote Testing Lead Ann Oberle made an oral presentation based on a memorandum starting on page 9 of the June 20 meeting materials regarding approximately 380,000 postcards mailed recently to registered voters who had not participated in an election in four years.

Commissioners and staff discussed various aspects of the four-year maintenance process. The report was for information only, and no action was taken.

## **F. ES&S Voting Equipment Testing and Approval**

Steve Pearson, vice president of Elections Systems & Software (ES&S), appeared and made a brief presentation regarding the company's petition for approval of its EVS 5.2.2.0 and EVS 5.3.2.0 systems. This is an upgrade to a previous version of this system approved by the Wisconsin Government Accountability Board in 2014, and includes a new mid-range, high-speed ballot scanner for municipalities that may want to have central counting of absentee ballots. The EVS 5.3.2.0 includes a modem component for transmitting unofficial Election Night results.

Commissioners and Mr. Pearson discussed federal certification and testing, voting equipment security, and other equipment features and issues. Mr. Pearson also discussed the ExpressLink application, which prints a ballot style activation card that ensures voters who use the ExpressVote universal ballot marking device get the correct ballot.

Election Specialist Richard Rydecki made an oral presentation based on a memorandum starting on page 15 of the June 20 meeting materials regarding testing of the ES&S products and staff's recommendations for approval.

Commissioners, staff and ES&S representatives discussed the issue of crossover votes and the screens presented to voters if they insert an improperly marked ballot into the tabulator. They also discussed the ExpressLink application, which Mr. Rydecki

explained was not before the Commission for approval because it is not certified by the U.S. Election Assistance Commission.

At 11:45 a.m., Chair Thomsen called a recess so Commissioners could see a demonstration of the equipment in another room followed by a break for lunch. The Commission reconvened at 1:01 p.m.

Following the demonstration, Mr. Rydecki continued his presentation regarding testing and approval of the ES&S equipment. Commissioners and staff continued their discussion of approval with Mr. Pearson, who addressed questions about warning messages displayed on the DS200 optical scan tabulator. He said the messages are customizable, and ES&S would work with Commission staff to develop appropriate language. Commissioners Glancey and Jacobs also discussed screens for party preference selection at partisan primary elections. Mr. Pearson said the vendor would work with WEC staff to make the proposed changes, but the kinds of language changes discussed may require changes to the firmware.

Chair Thomsen asked Commissioners what they wanted to do about the ExpressLink application regarding customizations of screens to provide warnings to voters about cross-party voting in partisan primaries. Commissioners directed staff to develop a protocol for testing the ExpressLink component and test the ExpressLink to the standards included in the protocol. Staff will also work with ES&S concerning revising voting equipment screens to address Commissioners' concerns and provide the Commission with updates on those revisions.

**MOTION:** Adopt the staff's recommendations with the modifications and conditions described and set forth at today's meeting for approval of the ES&S voting system's Application for Approval of EVS 5.2.2.0 in compliance with US EAC certificate ESSEVS5220 including the conditions described in the staff memorandum as modified at today's meeting and the ES&S voting system's Application for Approval of EVS 5.3.2.0 including the conditions described above and as modified today. Moved by Commissioner Jensen, second by Commissioner Glancey. Motion carried unanimously.

## **G. Electronic Poll Books**

Mr. Rydecki, WisVote Functional Lead Sarah Whitt and WisVote Specialist Sara Linski made an oral presentation based on a memorandum in the supplemental meeting materials for the June 20 meeting materials regarding electronic poll books. Staff recommends the Commission authorize development of a system using in-house resources, without charge to municipalities that would choose to use it.

Commissioners and staff discussed staff research into other states that had developed their own systems, timelines for development and how the system would work. They also discussed cost savings to municipalities if the state develops a system versus buying from vendors.

**MOTION:** Direct staff to proceed with efforts to build and implement an electronic poll book solution that is compatible with WisVote and made available to municipalities at no cost. The system will be pilot tested in February and April 2018 and available to all municipalities in August 2018. In the event that municipalities request the ability to purchase vendor systems, staff shall request further guidance from the Commission. Moved by Commissioner Jacobs, seconded by Commissioner Glancey. Motion carried unanimously.

## **H. Post-Election Voting Equipment Audit**

Mr. Rydecki made an oral presentation based on a memorandum starting on page 67 of the June 20 meeting materials regarding post-election voting equipment audits in municipalities that did not hand-count ballots during the recount of the presidential election in December 2016. The audits found voting equipment met accuracy standards, with one exception, an Optech Eagle, which could not be reconciled after three separate audits due to the use of nonstandard marking devices. He said staff has issued supplemental procedures for jurisdictions using this equipment recommending that all absentee by mail ballots be remade by election inspectors using an approved marking device.

Commissioners and staff discussed issues related to Optech Eagle usage, which is dwindling due to purchases of newer systems. Mr. Rydecki said the vendor that supports this equipment will discontinue support after 2018, at which time the WEC may wish to decertify it. Staff will provide commissioners with a timeline for decertification at the September 2017 meeting.

**MOTION:** Accept the staff report of the 2016 Voting Equipment Audit. Moved by Commissioner Glancey, seconded by Commissioner Gill. Motion carried unanimously.

## **I. Administrative Rules**

Staff Counsel Nathan Judnic made an oral presentation based on a memorandum starting on page 81 of the June 20 meeting materials regarding administrative rule promulgation. Staff recommends the Commission approve four scope statements that have already been approved by the Governor and published in the Wisconsin Administrative Register for 10 days.

**MOTION:** Approve the Statements of Scope for Chapter EL 4, relating to election observers, EL 3.60, relating to an absentee subscription service and fee schedule, Chapter EL 13, relating to training for election inspectors and special voting deputies, and EL 6.06, relating to curbside voting procedures. The Commission further directs staff to draft the preliminary rules and draft economic impact statements for the above referenced code chapters and sections. Moved by Commissioner Jacobs, seconded by Commissioner Jensen. Motion carried unanimously.

**J. Legislative Agenda**

Mr. Judnic made an oral presentation based on a memorandum starting on page 101 of the June 20 meeting materials regarding the Commission’s legislative agenda.

Chair Thomsen suggested the Commission address the staff recommendations in September and concentrate on the issue regarding the definition of overseas voters raised by Mr. Malischke during the public appearances section of the meeting. Commissioners and staff discussed ways to resolve conflict between state and federal law in defining overseas voters. By consensus, commissioners directed staff to solicit opinions of the Wisconsin Department of Justice and the Wisconsin Legislative Council for presentation at the Commission’s meeting in September.

**K. Legislative Update**

Elections Specialist Robert Williams made an oral presentation based on a memorandum starting on page 117 of the June 20 meeting materials regarding election-related action in the Legislature. The Commission took no action.

**L. Commission Staff Update**

Administrator Haas made an oral presentation based on a memorandum starting on page 125 of the June 20 meeting materials regarding staff activities since the last Commission meeting. He highlighted personnel changes including the departure of WisVote Trainer Juanita Borton.

**M. Per Diem Authorization**

**MOTION:** Authorize payment of one and a half days of per diem for the June 20, 2017 Wisconsin Elections Commission meeting. Moved by Commissioner Jacobs, seconded by Commissioner Jensen.

Roll call vote: Gill:	Aye	Glancey:	Aye
King:	Absent	Jacobs:	Aye
Jensen:	Aye	Thomsen:	Aye

Motion carried unanimously.

**N. Closed Session**

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

**MOTION:** Move to closed session pursuant to § 19.85(1)(g) to confer with counsel concerning pending litigation. Moved by Commissioner Jacobs, seconded by Commissioner Jensen.

Roll call vote: Gill:	Aye	Glancey:	Aye
King:	Absent	Jacobs:	Aye
Jensen:	Aye	Thomsen:	Aye

Motion carried unanimously. The Commission convened in closed session at 3:23 p.m.

## **O. Adjourn**

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

The Commission adjourned at 4:00 p.m.

####

The next regular meeting of the Wisconsin Elections Commission is scheduled for Tuesday, September 26, 2017, at the commission's offices in Madison, Wisconsin beginning at 10:00 a.m.

June 20, 2017 Wisconsin Elections Commission meeting minutes prepared by:

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Reid Magney, Public Information Officer

August 14, 2017

June 20, 2017 Wisconsin Elections Commission meeting minutes certified by:

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Beverly Gill, Commission Secretary

September 26, 2017

# WISCONSIN ELECTIONS COMMISSION

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ADMINISTRATOR MICHAEL HAAS

---

**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Administrator

**SUBJECT:** National Voter Registration Day

National Voter Registration Day has been promoted as an unofficial holiday by numerous national, state and local organizations since 2012. The fourth Tuesday in September has been designated as National Voter Registration Day to increase awareness of voter registration requirements and encourage voter registration, especially in advance of registration deadlines for November general elections. The National Associations of Secretaries of State and the National Association of State Election Directors (NASED) have passed resolutions to recognize and promote National Voter Registration Day.

Attached is the 2017 resolution passed by NASED. Also attached is a similar draft resolution for the Commission's consideration which highlights the WEC's online registration system and other methods of registering in Wisconsin and encourages Wisconsin residents to register to vote.

**Recommended Motion:**

The Commission adopts the attached resolution recognizing National Voter Registration Day and encourages Wisconsin citizens to register to vote.

NASED Resolution Establishing the Fourth Tuesday of September as National Voter Registration Day

WHEREAS, the nation's State Election Directors are committed to encouraging voter registration and increasing access to elections; and

WHEREAS, NASED supports new and innovative methods of registration, as well as continuing efforts by state and local election officials to register qualified citizens; and

WHEREAS, the need for public information and education on voter registration is critical to Americans active participation in elections;

THEREFORE,

NOW BE IT RESOLVED THAT the National Association of State Election Directors (NASED) shall declare, in accordance with our observation of September as National Voter Registration Month, the fourth Tuesday of September as National Voter Registration Day.

Adopted the 24th day of August 2017

EXPIRES: Summer 2022

# Wisconsin Elections Commission Resolution

## Recognizing September 26, 2017 as National Voter Registration Day

**WHEREAS**, Wisconsin has an estimated voting-age population of 4,473,598 residents, of which 3,349,816, or 74 percent, were registered to vote on September 1, 2017.

**WHEREAS**, the Wisconsin Elections Commission is committed to encouraging voter registration and increasing access to elections; and

**WHEREAS**, the Commission supports new and innovative methods of registration, as well as continuing efforts by local election officials and other groups to register qualified citizens; and

**WHEREAS**, the Commission launched an online voter registration website in early 2017 at [MyVote.WI.gov](http://MyVote.WI.gov), which has already processed nearly 10,000 applications; and

**WHEREAS**, the need for public information and education on voter registration is critical to Wisconsin residents' active participation in elections; and

**WHEREAS**, the National Association of State Election Directors and other national organizations have declared, in accordance with observation of September as National Voter Registration Month, the fourth Tuesday of September as National Voter Registration Day;

**NOW, THEREFORE, BE IT RESOLVED THAT** the Wisconsin Elections Commission shall declare, in accordance with the observation of September as National Voter Registration Month, that September 26, 2017 is National Voter Registration Day in Wisconsin.

Adopted this 27th day of September, 2017

Mark Thomsen, Chair

Ann S. Jacobs, Vice Chair

Beverly Gill, Secretary

Julie Glancey, Commissioner

Jodi Jacobs, Commissioner



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MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

---

**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Administrator

**SUBJECT:** Presidential Advisory Commission on Election Integrity

As the Commission is aware, the Presidential Advisory Commission on Election Integrity (PACEI) has requested that state election agencies transmit publicly available voter data to the Commission. The PACEI has also invited state election agencies to provide input regarding several election issues and the federal government's role in elections. The WEC has communicated the process for requesting and purchasing voter registration data and the information which is publicly available to the PACEI. The Presidential Commission initially indicated it would be in contact with staff regarding purchasing the statewide voter registration list but has not followed up to obtain Wisconsin's voter data.

Attached is the original correspondence from the Vice Chair of the PACEI as well as subsequent clarification of the request, as well as the response submitted by WEC Chair Thomsen. No response is being submitted to the policy questions posed by the PACEI until the Commission has an opportunity to discuss the request. Most states have not provided a response to the PACEI's policy questions, and the Commission may decide whether to submit feedback regarding any of those issues.



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## Presidential Advisory Commission on Election Integrity

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June 28, 2017

The Honorable Douglas La Follette  
Secretary of State  
PO Box 7848  
Madison, WI 53707-7848

Dear Secretary La Follette,

I serve as the Vice Chair for the Presidential Advisory Commission on Election Integrity (“Commission”), which was formed pursuant to Executive Order 13799 of May 11, 2017. The Commission is charged with studying the registration and voting processes used in federal elections and submitting a report to the President of the United States that identifies laws, rules, policies, activities, strategies, and practices that enhance or undermine the American people’s confidence in the integrity of federal elections processes.

As the Commission begins its work, I invite you to contribute your views and recommendations throughout this process. In particular:

1. What changes, if any, to federal election laws would you recommend to enhance the integrity of federal elections?
2. How can the Commission support state and local election administrators with regard to information technology security and vulnerabilities?
3. What laws, policies, or other issues hinder your ability to ensure the integrity of elections you administer?
4. What evidence or information do you have regarding instances of voter fraud or registration fraud in your state?
5. What convictions for election-related crimes have occurred in your state since the November 2000 federal election?
6. What recommendations do you have for preventing voter intimidation or disenfranchisement?
7. What other issues do you believe the Commission should consider?

In addition, in order for the Commission to fully analyze vulnerabilities and issues related to voter registration and voting, I am requesting that you provide to the Commission the publicly-available voter roll data for Wisconsin, including, if publicly available under the laws of your state, the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social

security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.

You may submit your responses electronically to [ElectionIntegrityStaff@ovp.eop.gov](mailto:ElectionIntegrityStaff@ovp.eop.gov) or by utilizing the Safe Access File Exchange (“SAFE”), which is a secure FTP site the federal government uses for transferring large data files. You can access the SAFE site at <https://safe.amrdec.army.mil/safe/Welcome.aspx>. We would appreciate a response by July 14, 2017. Please be aware that any documents that are submitted to the full Commission will also be made available to the public. If you have any questions, please contact Commission staff at the same email address.

On behalf of my fellow commissioners, I also want to acknowledge your important leadership role in administering the elections within your state and the importance of state-level authority in our federalist system. It is crucial for the Commission to consider your input as it collects data and identifies areas of opportunity to increase the integrity of our election systems.

I look forward to hearing from you and working with you in the months ahead.

Sincerely,

A handwritten signature in black ink that reads "Kris Kobach". The signature is written in a cursive, flowing style.

Kris W. Kobach  
Vice Chair  
Presidential Advisory Commission on Election Integrity



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## Presidential Advisory Commission on Election Integrity

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July 26, 2017

Wisconsin Elections Commission  
Mr. Michael Haas, Administrator  
P.O. Box 7984  
Madison, WI 53707

Dear Administrator Haas,

In my capacity as Vice Chair of the Presidential Advisory Commission on Election Integrity, I wrote to you on June 28, 2017, to request publicly available voter registration records. On July 10, 2017, the Commission staff requested that you delay submitting any records until the U.S. District Court for the District of Columbia ruled on a motion from the Electronic Privacy Information Center that sought to prevent the Commission from receiving the records. On July 24, 2017, the court denied that motion. In light of that decision in the Commission's favor, I write to renew the June 28 request, as well as to answer questions some States raised about the request's scope and the Commission's intent regarding its use of the registration records. I appreciate the cooperation of chief election officials from more than 30 States who have already responded to the June 28 request and either agreed to provide these publicly available records, or are currently evaluating what specific records they may provide in accordance with their State laws.

Like you, I serve as the chief election official of my State. And like you, ensuring the privacy and security of any non-public voter information is a high priority. My June 28 letter only requested information that is already available to the public under the laws of your State, which is information that States regularly provide to political candidates, journalists, and other interested members of the public. As you know, federal law requires the States to maintain certain voter registration information and make it available to the public pursuant to the National Voter Registration Act (NVRA) and the Help America Vote Act (HAVA). The Commission recognizes that State laws differ regarding what specific voter registration information is publicly available.

I want to assure you that the Commission will not publicly release any personally identifiable information regarding any individual voter or any group of voters from the voter registration records you submit. Individuals' voter registration records will be kept confidential and secure throughout the duration of the Commission's existence. Once the Commission's analysis is

complete, the Commission will dispose of the data as permitted by federal law. The only information that will be made public are statistical conclusions drawn from the data, other general observations that may be drawn from the data, and any correspondence that you may send to the Commission in response to the narrative questions enumerated in the June 28 letter. Let me be clear, the Commission will not release any personally identifiable information from voter registration records to the public.

In addition, to address issues raised in recent litigation regarding the data transfer portal, the Commission is offering a new tool for you to transmit data directly to the White House computer system. To securely submit your State's data, please have a member of your staff contact Ron Williams on the Commission's staff at [ElectionIntegrityStaff@ovp.eop.gov](mailto:ElectionIntegrityStaff@ovp.eop.gov) and provide his or her contact information. Commission staff will then reach out to your point of contact to provide detailed instructions for submitting the data securely.

The Commission will approach all of its work without preconceived conclusions or prejudgments. The Members of this bipartisan Commission are interested in gathering facts and going where those facts lead. We take seriously the Commission's mission pursuant to Executive Order 13799 to identify those laws, rules, policies, activities, strategies, and practices that either enhance or undermine the integrity of elections processes. I look forward to working with you in the months ahead to advance those objectives.

Sincerely,

A handwritten signature in black ink that reads "Kris Kobach". The signature is written in a cursive, slightly slanted style.

Kris W. Kobach  
Vice Chair  
Presidential Advisory Commission on Election Integrity

# WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR  
POST OFFICE BOX 7984  
MADISON, WI 53707-7984  
(608) 261-2028  
ELECTIONS@WI.GOV  
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COMMISSIONERS

BEVERLY R. GILL  
JULIE M. GLANCEY  
ANN S. JACOBS  
JODI JENSEN  
STEVE KING

MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

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Sent by email to [ElectionIntegrityStaff@ovp.eop.gov](mailto:ElectionIntegrityStaff@ovp.eop.gov)

July 28, 2017

Mr. Kris W. Kobach  
Vice Chair  
Presidential Advisory Commission on Election Integrity  
Washington, DC

Dear Mr. Kobach:

As Chair of the bipartisan Wisconsin Elections Commission (WEC), which oversees the work of our agency staff, I am responding to your correspondence dated July 26, 2017 requesting that the State of Wisconsin provide publicly available data from its voter registration database to the Presidential Advisory Commission on Election Integrity (PACEI). The WEC's next meeting is scheduled for September 26, 2017, and the full Commission will publicly discuss all your requests for information at that time. I anticipate that the WEC will work with you and your fellow commissioners to the extent allowed by Wisconsin law. However, I wanted to provide you with a prompt preliminary response.

I am honored to report that Wisconsin state and local election officials along with many fellow citizens conducted a thorough statewide recount of the November 2016 Presidential Election in December 2016. We are confident that the results are accurate and do not contain any statistically significant number of votes cast by persons who were not eligible to vote.<sup>1</sup> We are proud of our open, honest and clean elections here in the Badger State.

The WEC maintains Wisconsin's voter registration database. Under Wisconsin law, certain limited data about Wisconsin voters is available for purchase from the WEC. The publicly available data includes the names, addresses and voter participation histories of individuals who are registered voters or have been registered voters at some point since 2005, as well as indicators that an individual is a military or permanent overseas voter.

Under Wisconsin law, the WEC must maintain the confidentiality of other voter data including birthdates, driver license numbers, and the last four digits of a Social Security number if it is included in the voter's record. The partial Social Security number data is limited to the relatively small number of voters who registered without providing a driver license or State ID number. A voter's request for an accommodation due to a disability and the name and address of confidential voters (who are victims of domestic or sexual abuse or assault) are also confidential data.

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<sup>1</sup> For the November 8, 2016 Presidential Election, 79 potential incidents of voting by ineligible felons have been referred to local prosecutors for investigation and potential charges, which represents 0.00263 percent of the 3,004,051 votes cast. We do not have accurate statistics regarding how many, if any, of those referrals resulted in further investigation or prosecution.

Confidential data may be shared only with law enforcement agencies for law enforcement purposes and with agencies of other states for official purposes.

Because Wisconsin and many other states are unable to disclose non-public data necessary to accurately match voters within or across states, I can only point out that the data being collected by the PACEI cannot be used to effectively assess the accuracy of Wisconsin's or our great country's voter rolls. Through our experience in various data matching processes conducted by the WEC (and its predecessor entities), we know that even matching the first and last names as well as the birthdates of individuals in separate databases will likely result in numerous false positives. Because of the certainty of false positive matches when using limited databases, I hope and trust that you will not draw any conclusions about the extent of voter fraud in Wisconsin or nationwide from any analysis of the data being collected.

Twenty states, including Wisconsin, are members of the Electronic Registration Information Center (ERIC), which has an excellent track record of applying advanced data-matching techniques to its members' voter lists and other official data sources to help them maintain current and accurate voter rolls. I encourage the PACEI to consult with the experts at ERIC regarding the powers and limitations of list matching as well as the necessary steps to be taken to ensure that voter data is anonymized and securely maintained.

Your letter asked that a member of our staff contact PACEI staff regarding transfer of available voter data. However, before that can occur, Wisconsin Statutes and administrative rules establish a fee schedule for the publicly available data in the voter registration database based upon the number of voter records requested. The fee schedule is capped at \$12,500 for the entire statewide list. Accordingly, the PACEI may purchase voter data and obtain it electronically from the WEC through our BADGER Voters website at <https://gabapps.wi.gov/BADGERVoters/default.aspx>. Payment must be received before a data request is fulfilled.

Please feel free to request Wisconsin's publicly available voter data directly from the BADGER Voters website, or have your staff contact WEC Public Information Officer Reid Magney, who can facilitate the fulfillment of your data request, at 608-267-7887 or [reid.magney@wi.gov](mailto:reid.magney@wi.gov). If you have other questions regarding this correspondence, please feel free to contact or call me by contacting Mr. Magney, who will provide you with a direct line to me.

The WEC will review and discuss all your additional questions at our September 26, 2017 meeting. Members of the PACEI and your staff are welcome to attend our meeting in Madison, Wisconsin, and we hope to see you in the Badger State. Forward, always Forward.

Sincerely,



Mark Thomsen  
Chair  
Wisconsin Elections Commission

Enclosures



# WISCONSIN ELECTIONS COMMISSION

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VACANCY

MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Administrator

**SUBJECT:** Alternative Absentee Voting Proposal

Several municipal clerks have been working with legislators to draft proposed legislation which would permit municipalities the option of allowing voters to insert their completed ballots into voting equipment during in-person absentee voting at the municipal clerk's office. Under current law, absentee ballots voted in the clerk's office are sealed in certificate envelopes, secured in the clerk's office and transported to the polls or a central counting location where they are processed on Election Day. The alternate process is being proposed as a possible solution to the challenges involved in processing all absentee ballots on Election Day, which have become more significant with the increasing popularity of in-person absentee voting.

Commission staff has participated in several meetings with clerks and legislators regarding the proposed alternative process and draft legislation. Given that the proposal involves significant policy and election administration issues which have not been considered by the Commission, staff's role has been limited to evaluating possible legal and administrative issues regarding the draft legislation and discussing possible solutions. Some of the issues identified by staff have been addressed in subsequent versions of the draft legislation and other issues identified by staff continue to exist.

Attached to this memorandum are an outline of the proposed process which was submitted by the clerks advocating the alternative absentee voting process legislation as well as two draft bills. The first bill would establish the option and requirements of the alternative process (LRB-1890/1). The second bill would change current law by directing that all absentee ballots submitted by electors who subsequently pass away before Election Day are counted (LRB-3323/1). In the proposed alternative process, it would not be possible to identify the ballots of deceased electors after they are deposited into the voting equipment at the clerk's office.

Some of the municipal clerks advocating the draft legislation plan to attend the Commission meeting to request the Commission's support of the proposal and to answer any questions from the Commission. No action is required but the Commission may determine whether it wishes to take a position regarding the draft legislation or direct staff to take any other specific steps related to it.

# **AVEO** Absentee Voting Efficiency Option!

The elector feeds their in-person absentee ballot directly into a voting machine instead of sealing it inside an envelope!

A group Municipal Clerks are working with state legislators to introduced legislation to improve the in-person absentee voting process! Since no-excuse absentee voting laws were passed, it has grown tremendously. This trend to vote “early” is highly promoted by both political parties and media alike. Additionally, there is a convenience factor that has caught on and more and more voters are choosing in-person absentee over the traditional visit to the polling site on Election Day.

The current process of placing the ballot inside an envelope has been used from the beginning when it was envisioned that a few voters would be out of town on Election Day so they could come to the office and put their ballot in an envelope, like mailed ballots, to be delivered to the polls. This process never envisioned that thousands and thousands of voters would be appearing before their municipal Clerk to vote absentee in the office. However, that is the reality of today since the law changed to no excuse absentee voting! The envelope process is not efficient for the municipality or the voter. Efficiency changes to meet the significant demands of in-person absentee voting’s growing popularity is greatly needed.

LRB-1890 is a bill that would provide communities with an option to provide an efficient process for communities really needing a solution. When a municipality enacts an ordinance or adopts a resolution to implement the absentee voting efficiency option (AVEO), the Wisconsin Elections Commission reviews and certifies that the municipality is capable of secure implementation of that option. Once that happens the elector may cast their ballot directly into an electronic voting system prior to Election Day. The votes are not tabulated until Election Day, however the elector would feed their own absentee ballot into the machine, at participating municipalities. Following are the benefits:

## LRB-1890, ABSENTEE VOTING EFFICENCY OPTION (AVEO):

- Cost savings in envelope supplies and additional staffing to manage thousands of ballot envelopes!
- A true secret ballot for the in-person absentee voter as the voter feeds their own ballot!
- Increases accuracy on the ballot! The machine will alert the voter as to any possible balloting errors that would affect the counting of their intended vote! Voters correct their own ballot errors.
- Reduces the number of ballots needing to be remade by poll workers! Reduces poll worker processing errors!
- The statewide system is required for use in the AVEO process so voters that vote in person absentee would be flagged in the system as already voting a ballot! With programming, this information could be provided on the poll lists and/or e-poll books.

---

*more*

- Reduces the Election Day time crunch for getting all ballots into machines resulting in quicker election night results!
- Safe and secure voting! Instills voter confidence that their ballot was counted!

LRB 3323 is a bill that would require the counting of the ballot of a qualified elector who votes an absentee ballot during the absentee voting period and then passes away prior to Election Day. The bill is part of a two bill package with LRB-1890 and would allow municipalities to treat absentee ballots voted during the absentee voting period fairly.

This is a rare event, however it does occasionally happen whereby an elector votes an absentee ballot and then tragically dies before Election Day. Current law requires the absentee ballot be pulled when the Clerk is made aware of the passing. We have found that the size of the community you live in lends itself to disparities in whether the Clerk is aware of the passing or not. This bill treats the electors casting absentee ballots fairly across all sized municipalities.

#### LRB-3323, TWO BILL PACKAGE WITH LRB-1890:

- Currently there is an unfair disparity on how these ballots are treated throughout the state:
  - The reality is that in a smaller municipality where the Clerk or their staff personally knows most or all the voters in their municipality – a deceased voter’s ballot is pulled and rejected (not counted).
  - The reality in a mid to large-size municipalities where the Clerk or their staff does not personally know most or all of their voters – a ballot rarely gets pulled as formal notification is often received well past Election Day. Unless the voter has some sort of high public profile, it is unlikely the Clerk is aware therefore, a deceased voter’s ballot is often counted.

Consider that the voter is alive and legitimately voting during the valid absentee voting period! Allowing all legitimate ballots voted during the absentee voting period to count, would allow for fairness to all voters whether they live in a small town or a very large city.

The purpose of our presentation is to make you aware of these bills and our efforts in seeking an efficiency option while also requesting your support and the support of your staff members at the state Elections Commission!

**Have questions? Contact: Kelly Michaels, City of Brookfield (262) 796-6653; Gina Kozlik, City of Waukesha (262) 524-3550; Janice Moyer, Village of Menomonee Falls (262) 532-4210; Meri Majeske and Barbara Whitmore, Town of Genesee (262) 968-3656; Gail Tamez, Village of Wales (262) 968-3968.**



## 2017 BILL

1     **AN ACT** *to renumber and amend* 5.84 (1); and *to create* 5.84 (1) (b), 5.91 (19)  
2             and subchapter VI of chapter 6 [precedes 6.981] of the statutes; **relating to:**  
3             using an electronic voting machine to cast a vote with an in-person absentee  
4             ballot.

---

### *Analysis by the Legislative Reference Bureau*

This bill authorizes a municipality to allow its electors to vote before election day by using an electronic voting machine to cast an in-person absentee ballot. If a municipality enacts an ordinance or adopts a resolution to implement this method, and the Elections Commission certifies that the municipality is capable of implementation, an elector may vote before election day at the municipal clerk's office by completing his or her ballot and casting the ballot using an electronic voting system. The period for this option is the same as for making applications for in-person absentee ballots: beginning no earlier than the third Monday preceding the election and ending no later than 7 p.m. on the Friday preceding the election. The votes are not tabulated before election day, but the municipal clerk publishes the daily tally of the total number of ballots cast before election day on the municipality's Internet site. The current law that applies to voting on election day with regard to election observers and assisting the disabled also applies to voting as provided under the bill.

The bill also requires the Elections Commission to certify electronic voting systems that include a report function capable of reporting write-in votes by scanning the ballots and electronically capturing the write-in votes.

**BILL**

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 5.84 (1) of the statutes is renumbered 5.84 (1) (a) and amended to  
2 read:

3           5.84 (1) (a) ~~Where~~ Except as provided in par. (b), where any municipality  
4 employs an electronic voting system which utilizes automatic tabulating equipment,  
5 either at the polling place or at a central counting location, the municipal clerk shall,  
6 on any day not more than 10 days prior to the election day on which the equipment  
7 is to be utilized, have the equipment tested to ascertain that it will correctly count  
8 the votes cast for all offices and on all measures. Public notice of the time and place  
9 of the test shall be given by the clerk at least 48 hours prior to the test by publication  
10 of a class 1 notice under ch. 985 in one or more newspapers published within the  
11 municipality if a newspaper is published therein, otherwise in a newspaper of  
12 general circulation therein. The test shall be open to the public. The test shall be  
13 conducted by processing a preaudited group of ballots so marked as to record a  
14 predetermined number of valid votes for each candidate and on each referendum.  
15 The test shall include for each office one or more ballots which have votes in excess  
16 of the number allowed by law and, for a partisan primary election, one or more ballots  
17 which have votes cast for candidates of more than one recognized political party, in  
18 order to test the ability of the automatic tabulating equipment to reject such votes.  
19 If any error is detected, the municipal clerk shall ascertain the cause and correct the  
20 error. The clerk shall make an errorless count before the automatic tabulating  
21 equipment is approved by the clerk for use in the election.

**BILL**

1           **SECTION 2.** 5.84 (1) (b) of the statutes is created to read:

2           5.84 (1) (b) For a municipality that authorizes the absentee voting efficiency  
3 option under subch. VI of ch. 6, the municipal clerk shall have the automatic  
4 tabulating equipment tested, as provided under par. (a), on any day not more than  
5 10 days prior to the first day on which such voting is available in the municipality  
6 pursuant to s. 6.981.

7           **SECTION 3.** 5.91 (19) of the statutes is created to read:

8           5.91 (19) For certifications made under this section on or after the effective date  
9 of this subsection ... [LRB inserts date], if the device consists of an electronic voting  
10 machine, it includes a report function that is capable of reporting write-in votes by  
11 scanning the ballots and electronically capturing the write-in votes. If a device  
12 certified before the effective date of this subsection ... [LRB inserts date], consists  
13 of an electronic voting machine with such a report function, an election official may  
14 use that function to count write-in votes, as provided in s. 7.50 (2) (d) to (j), after the  
15 commission has tested the function.

16           **SECTION 4.** Subchapter VI of chapter 6 [precedes 6.981] of the statutes is  
17 created to read:

**CHAPTER 6****SUBCHAPTER VI****ABSENTEE VOTING EFFICIENCY OPTION**

21           **6.981 Efficiency option.** (1) (a) The municipal clerk shall complete the  
22 application as provided under s. 6.87 (1) and allow an elector to cast a ballot prior to  
23 election day by casting a ballot into an electronic voting system as provided under  
24 s. 6.80 at the municipal clerk's office, if the governing body of the municipality has  
25 enacted an ordinance or adopted a resolution to allow such voting and the

**BILL**

1 commission has certified the municipality under s. 6.982 (9) (a) to conduct such  
2 voting. An elector may vote under this subchapter no earlier than the opening of  
3 business on the 3rd Monday preceding the election and no later than 7 p.m. on the  
4 Friday preceding the election. The clerk's office, or a site designated under s. 6.855,  
5 may be open for voting under this subchapter Monday to Friday between the hours  
6 of 8 a.m. and 7 p.m. each day, but no voting is allowed under this subchapter on a legal  
7 holiday. A municipality shall specify the hours for voting in the notice under s. 10.01  
8 (2) (e).

9 (b) After the governing body of the municipality has enacted an ordinance or  
10 adopted a resolution to allow the voting procedure under par. (a), the municipality  
11 shall use that procedure for all subsequent elections until such time that the  
12 governing body enacts an ordinance or adopts a resolution repealing the use of the  
13 procedure. The municipal clerk or deputy municipal clerk shall supervise the voting  
14 procedure under par. (a).

15 (c) This subchapter does not preclude the clerk from using absentee envelopes  
16 when the clerk determines that such use is necessary.

17 **6.982 Administration.** (1) (a) Votes cast under s. 6.981 may not be tabulated  
18 until the closing of the polls on election day, but the municipal clerk shall publish on  
19 the municipality's Internet site a daily tally of the total number of ballots cast under  
20 s. 6.981 in the municipality. No person may otherwise view, print, provide, or release  
21 any results from ballots cast under s. 6.981 until the close of the polls on election day.

22 (b) An elector who casts a ballot under s. 6.981 that is accepted by automatic  
23 tabulating equipment may not request that the ballot be returned to him or her as  
24 defective in order to cast a new ballot, as provided under s. 6.80 (2) (c).

**BILL**

1           (c) The clerk shall reconcile the ballots cast each day to ensure that the number  
2 of ballots cast equals the number issued. If the clerk is unable to reconcile the ballots,  
3 the reconciliation shall be completed as provided under s. 7.51 (2).

4           **(2)** The county or municipal clerk or any other authorized person shall program  
5 memory devices for automatic tabulating equipment used by municipalities that  
6 authorize voting under s. 6.981 no later than 21 days prior to election day and the  
7 municipalities shall acquire a sufficient number of memory devices to facilitate the  
8 administration of a primary, the canvass following the primary, and the subsequent  
9 election and canvass.

10           **(3)** Automatic tabulating equipment used for purposes of this subchapter shall  
11 be secured with a tamper-evident seal and the municipal clerk shall check the seals  
12 for tampering at the beginning and ending of each day designated for voting under  
13 s. 6.981. The clerk shall daily document all checks performed under this subsection.

14           **(4)** For purposes of s. 6.981, the municipal clerk shall issue ballots using the  
15 voter registration and voter information systems established and maintained by the  
16 elections commission in the same manner that the systems are used to issue and  
17 track absentee ballots. The commission shall program the system so that ballots  
18 issued for purposes of this subchapter are tracked by sequentially numbering the  
19 absentee ballot certification and request log.

20           **(5)** (a) Except as provided in par. (b), an elector shall sign an absentee ballot  
21 certification request log for purposes of this subchapter. The municipal clerk shall  
22 have the elector provide an electronic or a handwritten signature, but if the clerk  
23 allows the use of electronic signatures, the clerk shall not generate a final absentee  
24 ballot log until after the last day designated for voting under s. 6.981.

**BILL**

1 (b) The municipal clerk may have an elector sign an electronic poll book using  
2 an electronic signature as an alternative to signing an absentee ballot certification  
3 request log under par. (a).

4 (6) (a) Except as provided in par. (c), the municipal clerk shall seal together all  
5 ballots cast in the municipality under s. 6.981 each day in a numbered and  
6 tamper-evident security seal ballot bag and document all such action and numbers.  
7 All such ballot bags shall remain in the clerk's possession, sealed and secured by the  
8 municipal clerk, until such time that they are needed for audit, recount, or storage.

9 (b) If the municipal clerk is required to report vote totals by ward, but the votes  
10 in multiple wards are processed through a single memory device and tabulator, the  
11 clerk shall not sort the ballots into wards before placing them into the bag described  
12 under par. (a).

13 (7) Section 7.41, regarding the public's right to access the polling place and s.  
14 6.82, regarding assisting electors, apply to voting conducted under s. 6.981.

15 (8) If an elector makes a challenge for cause in person, as provided under s.  
16 6.925, with regard to any person offering to vote under this subchapter, the clerk  
17 shall place the ballot in an absentee ballot envelope and send the envelope to the  
18 polling place to be challenged under s. 6.93.

19 (9) (a) The commission shall establish procedures for certifying municipalities  
20 to conduct voting under s. 6.981. The commission shall certify a municipality to  
21 conduct voting under s. 6.981 if it determines that the municipality is capable of  
22 adequately securing all equipment and ballots consistent with this subchapter and  
23 of satisfying all other requirements set forth in this subchapter.

24 (b) The commission shall establish procedures for the administration of this  
25 subchapter, including procedures to facilitate the secure transfer of memory devices

**BILL**

1 from their use for voting under s. 6.981 to their use in tabulating the votes on election  
2 day.

3 (END)



## 2017 BILL

1     **AN ACT to amend** 6.15 (6), 6.21 and 6.88 (3) (b) of the statutes; **relating to:**  
2             counting an absentee ballot cast by an elector who dies after casting the ballot  
3             and before election day.

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***Analysis by the Legislative Reference Bureau***

This bill requires election officials, as part of the process for canvassing absentee ballots, to count an absentee ballot cast by an individual who dies after casting the ballot and before election day. Under current law, such a ballot is not counted and is returned with the defective ballots to the official who issued the ballots.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4             **SECTION 1.** 6.15 (6) of the statutes is amended to read:  
5             6.15 (6) DEATH OF ELECTOR. When it appears by due proof to the inspectors or,  
6             in municipalities where absentee ballots are canvassed under s. 7.52, when it  
7             appears by due proof to the board of absentee ballot canvassers that a person ~~voting~~  
8             casting an absentee ballot at an election has died after casting the absentee ballot

**BILL**

1 and before the date of the election, the inspectors or board of absentee ballot  
2 canvassers shall ~~return the ballot with defective ballots to the issuing official~~ count  
3 the deceased elector's ballot.

4 **SECTION 2.** 6.21 of the statutes is amended to read:

5 **6.21 Deceased electors.** When by due proof it appears to the inspectors or,  
6 in municipalities where absentee ballots are canvassed under s. 7.52, when by due  
7 proof it appears to the board of absentee ballot canvassers that a person casting an  
8 absentee ballot at an election has died after casting the absentee ballot and before  
9 the date of the election, the inspectors or board of absentee ballot canvassers shall  
10 ~~return the ballot with defective ballots to the issuing official~~ count the deceased  
11 elector's ballot. The casting of the ballot of a deceased elector does not invalidate the  
12 election.

13 **SECTION 3.** 6.88 (3) (b) of the statutes is amended to read:

14 6.88 (3) (b) When the inspectors find that a certification is insufficient, that the  
15 applicant is not a qualified elector in the ward or election district, that the ballot  
16 envelope is open or has been opened and resealed, that the ballot envelope contains  
17 more than one ballot of any one kind or, except in municipalities where absentee  
18 ballots are canvassed under s. 7.52, that the certificate of a military or overseas  
19 elector who received an absentee ballot by facsimile transmission or electronic mail  
20 is missing, ~~or if proof is submitted to the inspectors that an elector voting an absentee~~  
21 ~~ballot has since died,~~ the inspectors shall not count the ballot. The inspectors shall  
22 endorse every ballot not counted on the back, "rejected (giving the reason)". The  
23 inspectors shall reinsert each rejected ballot into the certificate envelope in which  
24 it was delivered and enclose the certificate envelopes and ballots, and securely seal  
25 the ballots and envelopes in an envelope marked for rejected absentee ballots. The

**BILL**

1 inspectors shall endorse the envelope, “rejected ballots” with a statement of the ward  
2 or election district and date of the election, signed by the chief inspector and one of  
3 the inspectors representing each of the 2 major political parties and returned to the  
4 municipal clerk in the same manner as official ballots voted at the election.

5

(END)



## 2017 BILL

1     **AN ACT** *to renumber and amend* 5.84 (1); and *to create* 5.84 (1) (b), 5.91 (19)  
2             and subchapter VI of chapter 6 [precedes 6.981] of the statutes; **relating to:**  
3             using an electronic voting machine to cast a vote with an in-person absentee  
4             ballot.

---

### *Analysis by the Legislative Reference Bureau*

This bill authorizes a municipality to allow its electors to vote before election day by using an electronic voting machine to cast an in-person absentee ballot. If a municipality enacts an ordinance or adopts a resolution to implement this method, and the Elections Commission certifies that the municipality is capable of implementation, an elector may vote before election day at the municipal clerk's office by completing his or her ballot and casting the ballot using an electronic voting system. The period for this option is the same as for making applications for in-person absentee ballots: beginning no earlier than the third Monday preceding the election and ending no later than 7 p.m. on the Friday preceding the election. The votes are not tabulated before election day, but the municipal clerk publishes the daily tally of the total number of ballots cast before election day on the municipality's Internet site. The current law that applies to voting on election day with regard to election observers and assisting the disabled also applies to voting as provided under the bill.

The bill also requires the Elections Commission to certify electronic voting systems that include a report function capable of reporting write-in votes by scanning the ballots and electronically capturing the write-in votes.

**BILL**

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 5.84 (1) of the statutes is renumbered 5.84 (1) (a) and amended to  
2 read:

3           5.84 (1) (a) ~~Where~~ Except as provided in par. (b), where any municipality  
4 employs an electronic voting system which utilizes automatic tabulating equipment,  
5 either at the polling place or at a central counting location, the municipal clerk shall,  
6 on any day not more than 10 days prior to the election day on which the equipment  
7 is to be utilized, have the equipment tested to ascertain that it will correctly count  
8 the votes cast for all offices and on all measures. Public notice of the time and place  
9 of the test shall be given by the clerk at least 48 hours prior to the test by publication  
10 of a class 1 notice under ch. 985 in one or more newspapers published within the  
11 municipality if a newspaper is published therein, otherwise in a newspaper of  
12 general circulation therein. The test shall be open to the public. The test shall be  
13 conducted by processing a preaudited group of ballots so marked as to record a  
14 predetermined number of valid votes for each candidate and on each referendum.  
15 The test shall include for each office one or more ballots which have votes in excess  
16 of the number allowed by law and, for a partisan primary election, one or more ballots  
17 which have votes cast for candidates of more than one recognized political party, in  
18 order to test the ability of the automatic tabulating equipment to reject such votes.  
19 If any error is detected, the municipal clerk shall ascertain the cause and correct the  
20 error. The clerk shall make an errorless count before the automatic tabulating  
21 equipment is approved by the clerk for use in the election.

**BILL**

1           **SECTION 2.** 5.84 (1) (b) of the statutes is created to read:

2           5.84 (1) (b) For a municipality that authorizes the absentee voting efficiency  
3 option under subch. VI of ch. 6, the municipal clerk shall have the automatic  
4 tabulating equipment tested, as provided under par. (a), on any day not more than  
5 10 days prior to the first day on which such voting is available in the municipality  
6 pursuant to s. 6.981.

7           **SECTION 3.** 5.91 (19) of the statutes is created to read:

8           5.91 (19) For certifications made under this section on or after the effective date  
9 of this subsection ... [LRB inserts date], if the device consists of an electronic voting  
10 machine, it includes a report function that is capable of reporting write-in votes by  
11 scanning the ballots and electronically capturing the write-in votes. If a device  
12 certified before the effective date of this subsection ... [LRB inserts date], consists  
13 of an electronic voting machine with such a report function, an election official may  
14 use that function to count write-in votes, as provided in s. 7.50 (2) (d) to (j), after the  
15 commission has tested the function.

16           **SECTION 4.** Subchapter VI of chapter 6 [precedes 6.981] of the statutes is  
17 created to read:

**CHAPTER 6****SUBCHAPTER VI****ABSENTEE VOTING EFFICIENCY OPTION**

21           **6.981 Efficiency option.** (1) (a) The municipal clerk shall complete the  
22 application as provided under s. 6.87 (1) and allow an elector to cast a ballot prior to  
23 election day by casting a ballot into an electronic voting system as provided under  
24 s. 6.80 at the municipal clerk's office, if the governing body of the municipality has  
25 enacted an ordinance or adopted a resolution to allow such voting and the

**BILL**

1 commission has certified the municipality under s. 6.982 (9) (a) to conduct such  
2 voting. An elector may vote under this subchapter no earlier than the opening of  
3 business on the 3rd Monday preceding the election and no later than 7 p.m. on the  
4 Friday preceding the election. The clerk's office, or a site designated under s. 6.855,  
5 may be open for voting under this subchapter Monday to Friday between the hours  
6 of 8 a.m. and 7 p.m. each day, but no voting is allowed under this subchapter on a legal  
7 holiday. A municipality shall specify the hours for voting in the notice under s. 10.01  
8 (2) (e).

9 (b) After the governing body of the municipality has enacted an ordinance or  
10 adopted a resolution to allow the voting procedure under par. (a), the municipality  
11 shall use that procedure for all subsequent elections until such time that the  
12 governing body enacts an ordinance or adopts a resolution repealing the use of the  
13 procedure. The municipal clerk or deputy municipal clerk shall supervise the voting  
14 procedure under par. (a).

15 (c) This subchapter does not preclude the clerk from using absentee envelopes  
16 when the clerk determines that such use is necessary.

17 **6.982 Administration.** (1) (a) Votes cast under s. 6.981 may not be tabulated  
18 until the closing of the polls on election day, but the municipal clerk shall publish on  
19 the municipality's Internet site a daily tally of the total number of ballots cast under  
20 s. 6.981 in the municipality. No person may otherwise view, print, provide, or release  
21 any results from ballots cast under s. 6.981 until the close of the polls on election day.

22 (b) An elector who casts a ballot under s. 6.981 that is accepted by automatic  
23 tabulating equipment may not request that the ballot be returned to him or her as  
24 defective in order to cast a new ballot, as provided under s. 6.80 (2) (c).

**BILL**

1 (c) The clerk shall reconcile the ballots cast each day to ensure that the number  
2 of ballots cast equals the number issued. If the clerk is unable to reconcile the ballots,  
3 the reconciliation shall be completed as provided under s. 7.51 (2).

4 (2) The county or municipal clerk or any other authorized person shall program  
5 memory devices for automatic tabulating equipment used by municipalities that  
6 authorize voting under s. 6.981 no later than 21 days prior to election day and the  
7 municipalities shall acquire a sufficient number of memory devices to facilitate the  
8 administration of a primary, the canvass following the primary, and the subsequent  
9 election and canvass.

10 (3) Automatic tabulating equipment used for purposes of this subchapter shall  
11 be secured with a tamper-evident seal and the municipal clerk shall check the seals  
12 for tampering at the beginning and ending of each day designated for voting under  
13 s. 6.981. The clerk shall daily document all checks performed under this subsection.

14 (4) For purposes of s. 6.981, the municipal clerk shall issue ballots using the  
15 voter registration and voter information systems established and maintained by the  
16 elections commission in the same manner that the systems are used to issue and  
17 track absentee ballots. The commission shall program the system so that ballots  
18 issued for purposes of this subchapter are tracked by sequentially numbering the  
19 absentee ballot certification and request log.

20 (5) (a) Except as provided in par. (b), an elector shall sign an absentee ballot  
21 certification request log for purposes of this subchapter. The municipal clerk shall  
22 have the elector provide an electronic or a handwritten signature, but if the clerk  
23 allows the use of electronic signatures, the clerk shall not generate a final absentee  
24 ballot log until after the last day designated for voting under s. 6.981.

**BILL**

1           (b) The municipal clerk may have an elector sign an electronic poll book using  
2 an electronic signature as an alternative to signing an absentee ballot certification  
3 request log under par. (a).

4           **(6)** (a) Except as provided in par. (c), the municipal clerk shall seal together all  
5 ballots cast in the municipality under s. 6.981 each day in a numbered and  
6 tamper-evident security seal ballot bag and document all such action and numbers.  
7 All such ballot bags shall remain in the clerk's possession, sealed and secured by the  
8 municipal clerk, until such time that they are needed for audit, recount, or storage.

9           (b) If the municipal clerk is required to report vote totals by ward, but the votes  
10 in multiple wards are processed through a single memory device and tabulator, the  
11 clerk shall not sort the ballots into wards before placing them into the bag described  
12 under par. (a).

13           **(7)** Section 7.41, regarding the public's right to access the polling place and s.  
14 6.82, regarding assisting electors, apply to voting conducted under s. 6.981.

15           **(8)** If an elector makes a challenge for cause in person, as provided under s.  
16 6.925, with regard to any person offering to vote under this subchapter, the clerk  
17 shall place the ballot in an absentee ballot envelope and send the envelope to the  
18 polling place to be challenged under s. 6.93.

19           **(9)** (a) The commission shall establish procedures for certifying municipalities  
20 to conduct voting under s. 6.981. The commission shall certify a municipality to  
21 conduct voting under s. 6.981 if it determines that the municipality is capable of  
22 adequately securing all equipment and ballots consistent with this subchapter and  
23 of satisfying all other requirements set forth in this subchapter.

24           (b) The commission shall establish procedures for the administration of this  
25 subchapter, including procedures to facilitate the secure transfer of memory devices

**BILL**

1 from their use for voting under s. 6.981 to their use in tabulating the votes on election  
2 day.

3 (END)



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-3323/1  
JK:jld&ahe

## 2017 BILL

1     **AN ACT to amend** 6.15 (6), 6.21 and 6.88 (3) (b) of the statutes; **relating to:**  
2             counting an absentee ballot cast by an elector who dies after casting the ballot  
3             and before election day.

---

*Analysis by the Legislative Reference Bureau*

This bill requires election officials, as part of the process for canvassing absentee ballots, to count an absentee ballot cast by an individual who dies after casting the ballot and before election day. Under current law, such a ballot is not counted and is returned with the defective ballots to the official who issued the ballots.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

4             **SECTION 1.** 6.15 (6) of the statutes is amended to read:  
5             6.15 (6) DEATH OF ELECTOR. When it appears by due proof to the inspectors or,  
6             in municipalities where absentee ballots are canvassed under s. 7.52, when it  
7             appears by due proof to the board of absentee ballot canvassers that a person ~~voting~~  
8             casting an absentee ballot at an election has died after casting the absentee ballot

**BILL**

1 and before the date of the election, the inspectors or board of absentee ballot  
2 canvassers shall ~~return the ballot with defective ballots to the issuing official count~~  
3 the deceased elector's ballot.

4 **SECTION 2.** 6.21 of the statutes is amended to read:

5 **6.21 Deceased electors.** When by due proof it appears to the inspectors or,  
6 in municipalities where absentee ballots are canvassed under s. 7.52, when by due  
7 proof it appears to the board of absentee ballot canvassers that a person casting an  
8 absentee ballot at an election has died after casting the absentee ballot and before  
9 the date of the election, the inspectors or board of absentee ballot canvassers shall  
10 ~~return the ballot with defective ballots to the issuing official count the deceased~~  
11 elector's ballot. The casting of the ballot of a deceased elector does not invalidate the  
12 election.

13 **SECTION 3.** 6.88 (3) (b) of the statutes is amended to read:

14 6.88 (3) (b) When the inspectors find that a certification is insufficient, that the  
15 applicant is not a qualified elector in the ward or election district, that the ballot  
16 envelope is open or has been opened and resealed, that the ballot envelope contains  
17 more than one ballot of any one kind or, except in municipalities where absentee  
18 ballots are canvassed under s. 7.52, that the certificate of a military or overseas  
19 elector who received an absentee ballot by facsimile transmission or electronic mail  
20 is missing, ~~or if proof is submitted to the inspectors that an elector voting an absentee~~  
21 ~~ballot has since died,~~ the inspectors shall not count the ballot. The inspectors shall  
22 endorse every ballot not counted on the back, "rejected (giving the reason)". The  
23 inspectors shall reinsert each rejected ballot into the certificate envelope in which  
24 it was delivered and enclose the certificate envelopes and ballots, and securely seal  
25 the ballots and envelopes in an envelope marked for rejected absentee ballots. The

**BILL**

1 inspectors shall endorse the envelope, “rejected ballots” with a statement of the ward  
2 or election district and date of the election, signed by the chief inspector and one of  
3 the inspectors representing each of the 2 major political parties and returned to the  
4 municipal clerk in the same manner as official ballots voted at the election.

5

(END)



# WISCONSIN ELECTIONS COMMISSION

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ADMINISTRATOR MICHAEL HAAS

## MEMORANDUM

**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Elections Commission

**FROM:** Meagan McCord Wolfe  
Assistant Administrator

**SUBJECT:** Election Security Planning

To prepare for the 2018 elections cycle, and in response to the ongoing national conversation about elections security, the WEC has formalized an internal elections security planning team. The WEC elections security team aims to examine all aspects of security in relation to Wisconsin's election administration technology and laws. The team will develop a comprehensive plan to prepare agency systems and key players in addition to the development of an elections security response plan. The team will also provide the Commission with progress updates and draft documents during scheduled Commission meetings. The team welcomes the Commissioners to provide feedback, guidance, and additional items for consideration on the important matter of elections security.

To initiate the planning process, the WEC elections security planning team has created the *Wisconsin Elections Security Planning- 2018* outline, attached to this memo. The outline document is an index of resources and tasks that the WEC is considering as part of the elections security planning process. The document is divided into three main sections:

- **Section I: *Elections Security Preparation and Incident Prevention***  
The Preparation section of the report is divided by level of government; each level is then further defined by roles and elections security considerations. For example, at the U.S. Government Level, the team is examining system monitoring activities and best practice guidance issued by agencies such as the U.S. Elections Assistance Commission (EAC) and the U.S. Department of Homeland Security (DHS). In the Municipal Level of the outline, the team is examining what resources municipal clerks need to securely use technology such as the WisVote system, electronic poll books, and electronic voting equipment. WEC staff will incorporate election security topics into its training resources and events for local election officials.
- **Section II: *Elections Security Incident Response***  
The Response section of the report is also divided by level of government. The outline then includes election security related events that could be experienced at each level. The team will then develop contingency and action plans for each scenario. The plans can then be distributed to clerks and other key players to ensure each level of government understands their role in responding to an elections security event, should one occur.

- **Section III: Communications**

The Communications section of the outline identifies contacts and roles for each of the key players at the Federal, State, County, and Municipal levels as well as interested parties such as voter groups and the media. The Communications section will also include a glossary of election security terms. The glossary will ensure that WEC staff and other elections partners are communicating about elections security accurately and consistently.

The outline document will ultimately be used by the team as a table of contents for the agency's final Elections Security Preparation and Response plan and report. The report will include an analysis or action item for each item listed in the outline. For some items, such as best practice documents from the EAC, the report will include a narrative on the applicability of the best practice and how it will be used in Wisconsin. For other items, such as clerk training for the WisVote system, the team will summarize the training plan and implementation in the final report. To manage the many items included in the outline, WEC staff has also created a second document that divides the outline into line items. Each line item has been delegated to a WEC staff member along with a deadline for completing an analysis or output.

The outline has also been useful as a meeting agenda as WEC staff works with our elections security partners to track and collect information with the goal of maintaining cooperation and transparency during the planning process. WEC team members meet with DHS and DET on a regular basis and will continue to meet throughout 2017 and 2018. The team will also coordinate with local election officials, as well election officials in other states, to improve and expand the elections security planning outline. The strong partnerships and communication channels the WEC is creating now will serve the voters of the state well as the agency continues to prepare and respond to elections security concerns throughout the 2018 cycle.

At this point, WEC staff is not asking the Commission to take any action regarding the elections security plan. If Commissioners have additional security considerations they would like to include as part of the elections security plan, staff asks for that feedback at this time; this will allow the team adequate time to thoroughly analyze the issues and to include the items in the final report. In terms of next steps, the Commission can expect an updated draft of the *Wisconsin Elections Security Planning- 2018* outline and report at its December meeting. A final Wisconsin Elections Security plan and report will be submitted to the Commission in early 2018.

# WISCONSIN ELECTIONS SECURITY PLANNING - 2018

## Section I: Election Security Preparation and Incident Prevention

- A. U.S. Government Level-** Federal Bureau of Investigation (FBI), Department of Homeland Security (DHS), U.S. Elections Assistance Commission (EAC), Federal Voting Assistance Program (FVAP), and other federal agencies
1. [Certification of Voting Equipment \(EAC\)](#)
  2. *Providing Security Best Practices (EAC, FBI, DHS)*
    - a. [EAC- Managing Election Technology Documents](#)
      - i. [Ten Things to Know About Selecting a Voting System](#)
      - ii. [Ten Things to Know About Managing an Aging Voting System](#)
      - iii. [Considerations for Implementing Voting Systems with COTS Products](#)
      - iv. [Checklist- Securing Voter Registration Data](#)
      - v. [Checklist- Securing Election Night Reporting Systems](#)
    - b. DHS Resources
      - i. [Security Tips for Securing Voter Registration Data](#)
      - ii. [Best Practices for Continuity of Operations \(Handling Destructive Malware\)](#)
      - iii. [Ransomware: What It Is and What To Do About It](#)
      - iv. Resource Guide for Securing Election Infrastructure IT Systems
  3. *Training for State and Local Governments*
    - a. Training Resources
      - i. [FEDVTE](#) (DHS)
      - ii. [US Cert](#) (DHS)
      - iii. [On Guard, Online](#) (Federal Trade Commission)
      - iv. [Stay Safe Online](#) (National Cyber Security Alliance)
      - v. [Stop. Think. Connect](#) (National Cyber Security Alliance)
      - vi. DHS Physical Risk Assessments of Polling Places and Storage Facilities
      - vii. DHS Physical Front Training (Active Shooter, Bomb Threats, etc.)
      - viii. DHS Risk Assessment Checklists
    - b. EAC In-person Trainings for Local Election Officials
    - c. DHS In-person Trainings for Local Election Officials
  4. *Critical Infrastructure Designation & Monitoring Activity (DHS, FBI)*
    - a. Defining the Designation for Wisconsin
    - b. Coordinating Council
    - c. Providing Regular Scans
    - d. DHS Cyber Security Threat Assessments for the State
      - i. Cyber Hygiene Scans and Agreement with DHS

- e. EAC Resources
  - i. [Elections Critical Infrastructure Hub and Glossary](#)
  - ii. [CI Scoop Blog](#)
- 5. *Funding*
  - a. HAVA
  - b. Additional Funding for Elections Security

**B. National Elections Organizations** – National Association of Election Directors (NASED), National Association of Secretary of States (NASS), National Association of State Chief Information Officers (NASCIO), National Association of State Technology Directors (NASTD), National Institute of Standards and Technology (NIST), Election Center

1. *Providing Security Best Practices (NASED, NASS)*
2. *Liaison with U.S. Government and Presidential Commission on Election Integrity*

**C. State of Wisconsin Enterprise Level** – Wisconsin Division of Enterprise Technology, Wisconsin National Guard, State Law Enforcement

1. *Server Hosting and Management*
  - a. Centrally managed, monitored, and secured infrastructure
  - b. Partnerships with the Multi-State Information Sharing Analysis Center (MS-ISAC)
2. *Monitoring Threats*
  - a. Monitor Known Threats and Alert Users
  - b. Monitor FBI and DHS alert
    - i. Analyze State Systems Activity to Identify Breach
  - c. Certified Ethical Hackers on Staff for Testing
3. *Desktop Support*
  - a. Infected Workstation Support
  - b. Desktop Imaging
  - c. Software Support
4. *Fusion Center- Planning (Run by WI DOJ)*
  - a. Weekly Fusion Center Meetings (DET, DOJ, National Guard, FBI, and DHS)
  - b. Secret Clearance
5. *Provide Cyber Security Training*
  - a. Required Cyber Security Training Modules for State Users
  - b. Available Training for Local Users Not on State Network

**D. State Elections Level-** State of Wisconsin Elections Commission

1. *Development of Training*
  - a. [Emergency Contingency Plan](#)
  - b. Wisconsin Elections Commission Staff (WisVote and related applications)
  - c. County Clerks (Voting equipment, WisVote as a provider, Canvass)

- d. Municipal Clerks (WisVote users, e poll books, voting equipment)
  - e. Development of Clerk Security Checklists (Is your IT Secure? Is your Polling Place Secure?)
2. *WisVote*
    - a. User Access and Distribution of CRM CALs
    - b. System User Policy
      - i. Remote Access
      - ii. Hardware Requirements
      - iii. Software Requirements
      - iv. P.I.I. Custodian Language
    - c. User Permissions
    - d. User Passwords
      - i. Multi-factor authentication
      - ii. Password Recovery Process
    - e. Management of System Reports and Info (Exclude P.I.I. from reporting columns)
    - f. Systems testing
      - i. On-staff Certified Ethical Hacker
    - g. [CompTIA Security Certified](#) Staff (based on recommendations for DoD security positions)
    - h. MyVote (OVR, electronic ballot delivery, polling place look up, sample ballot, registration status)
  3. *Servers*
    - a. Patching (In-house schedule vs. DET)
    - b. Encryption of Data at Rest and in Motion (SQL 2016)
    - c. Nightly Comparisons of Database Changes (monitor unusual change activity)
  4. *Voting Equipment*
    - a. State Testing and Certification
    - b. Audits
  5. *E Poll Books*
    - a. Hardware
    - b. Software
    - c. Public Perception
    - d. Imports and Export of Data
  6. *Election Night Reporting*
    - a. System Security and Training
  7. *Legal Infrastructure*
    - a. Statutory References
    - b. Administrative Rules (V.E. and Ballot Security)
    - c. Implementing Legislative Changes
    - d. Secret Clearance for Chief Election Officials
  8. *Organization of a WI Election Security Coordinating Council (DHS, DET, WEC, County, Muni, Poll Workers, Voter Advocates)*
  9. *Document Storage and Backup*
    - a. Paper Archives (nomination papers, canvass statements)

**b. Electronic Archives (H: Drive, Clerk Communications, Training Modules)**

**E. County Level – County Clerk, County IT Departments, County Sheriff’s Office**

1. *WisVote*
  - a. Hardware & Software Requirements
  - b. Staff Security Measures
  - c. WisVote Provider for Some Municipalities
2. *Voting Equipment*
  - a. Programing of Equipment- Programing Ballot and Election, Election Management Software
  - b. Storage of Equipment Between Election
3. *Election Night Reporting*
  - a. Posting Unofficial Results
  - b. Entering Results into State Canvass Reporting System

**F. Municipal Level- Municipal Clerks, Local Law Enforcement**

1. *WisVote*
  - a. Hardware & Software Requirements
  - b. Staff Security Measures
  - c. Managing and Entering Voter Info for Municipality
2. *Electronic Poll Books*
  - a. Hardware & Software Requirements
  - b. Staff Security Measures
3. *Voting Equipment*
  - a. Pre and Post- Election Testing

**G. Other User Levels- Poll worker responsibility, local law enforcement**

1. *Voting Equipment*
2. *E-Poll Books*
3. *Polling Place Incidents and Disaster Response*

**H. Public Level- Voters, Voter Groups**

1. *Voter Education and Preparation*

## Section II: Elections Security Incident Response

**A. U.S. Government Level- U.S. Government Level-** Federal Bureau of Investigation (FBI), Department of Homeland Security (DHS), U.S. Elections Assistance Commission (EAC), Federal Voting Assistance Program (FVAP), and other federal agencies

1. *Monitoring Threats and Alerting States*
2. *Best Practices for Incident Response*
  - a. *EAC- Cyber Incident Response Best Practices*
3. *National Emergency Management*

**B. National Elections Organizations** – National Association of Election Directors (NASED), National Association of Secretary of States (NASS), National Association of State Chief Information Officers (NASCIO), National Association of State Technology Directors (NASTD), National Institute of Standards and Technology (NIST), Election Center

1. *Alerting States of Known Threats*

**C. State of Wisconsin Enterprise Level** – WI Division of Enterprise Technology, Wisconsin National Guard and Emergency Management

1. *Alerting Agency to Known Threats*
2. *Organization of Fusion Center*
3. *Wisconsin Emergency Management*
4. *State Server Isolation, Load Balance, and Recovery*
5. *Disaster Recovery*

**D. State Elections Level-** State of Wisconsin Elections Commission

1. *Emergency Authority of WEC and Governor*
2. *Fusion Center (Incident Response)*
  - a. *Communication of Incident to stakeholders*
  - b. *Coordination with Wisconsin Emergency Management*
3. *WisVote Database Breach*
  - a. *SQL Injection Response*
  - b. *Loss of Data*
  - c. *Data Breach*
  - d. *Data Altered*

**4. State Law Enforcement – Department of Justice**

**5. Internet Outage, MyVote Outage, WisVote Outage, or Server Event**

- a. Election Day**
  - i. VIP Feed/ Texting Option**
  - ii. Paper Back-Up (Poll Books and Polling Places)**
  - iii. DDOS Protection**
- b. Ballots Available Timeframe**
- c. Absentee Timeframe**
- d. Two Days Before an Election**
- e. No immediate Election (ballots not yet ready)**
  - i. OVR**

**6. Emergency Response Documents**

- a. COOP Plan for Agency**
- b. Emergency/Disaster Contingency Plan for Locals**

**E. County Level – County Clerk, County IT Departments, District Attorneys, County Law Enforcement**

- 1. WisVote**
- 2. Voting Equipment**
- 3. Incident Response**

**F. Municipal Level- Municipal Clerks, local law enforcement**

- 1. WisVote**
- 2. Voting Equipment**
- 3. Incident Response**

**G. Other User Levels- Poll worker responsibility, local law enforcement**

- 1. Voting Equipment**
  - a. Use on Election Day- Voter Support and Trouble Shooting**
- 2. Electronic Poll Books**
  - a.**

**H. Public Level- Voters, Voter Groups**

- 1. Training, education, media**

## **Section III. Communications**

### **A. Election Security Partners- Contacts and Communications Role**

1. Elections Commission
2. Division of Enterprise Technology
3. National Guard/Emergency Management
4. Governor's Office
5. WI Department of Justice
6. Department of Homeland Security
7. EAC
8. U.S. Department of Justice/U.S. Attorneys
9. FBI
10. District Attorneys
11. Local Law Enforcement
12. Voting Equipment Vendors
13. County Election Officials
14. Municipal Election Officials
15. Poll Workers
16. Voters
17. Media

### **B. Elections Security Term Glossary**

1. Hit
2. Scan
3. Target
4. Breach
5. Attack
6. Exposure
7. Compromise
8. Attempt
9. Intrusion
10. Incident
11. Event



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VACANCY

MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Administrator

Prepared and Presented by:  
Richard Rydecki, Elections Supervisor  
Robert Williams, Elections Specialist

**SUBJECT:** Optech Eagle Decertification Timeline

## Background

The Optech Eagle is an optical scan vote tabulator which has been in use in Wisconsin for over twenty years. The system requires a voter to use a marking device that produces a carbon-based mark for the machine to read the votes marked on a ballot. If a voter marks their ballot using a marking device other than a vendor approved marker or #2 pencil it is possible that the Optech Eagle will not be able to determine voter intent. In this event, the ballot may register as blank when inserted into the tabulator and no votes will be counted. This can especially be an issue for individuals who vote absentee at home, where they use a non-carbon based marking device like a ballpoint pen or a permanent marker when marking their ballot and have no opportunity to observe that their ballot may not be tabulated as they intended.

As part of the 2106 Post-Election Voting Equipment Audit, the Village of Hortonville and the Village of Mount Pleasant, municipalities that employ the Optech Eagle, had discrepancies between their audit totals and the machine totals from Election Day. In both municipalities, more votes for candidates on the ballot were counted during the hand count audit process than were reflected in the machine totals from Election Day. Neither municipality could provide a reasonable explanation for these differences despite several attempts at reconciling the results. After additional audits by both the County Clerk and the Commission staff, it is suspected that incorrect marking devices were likely responsible for the discrepancies.

The technological limitations of the Optech Eagle have been acknowledged by the equipment vendor and have been known by local election officials who utilize the equipment for quite some time. As a result, most local election officials have procedures in place to address the limitations related to marking devices used with this equipment, including instructions for processing absentee ballots returned by mail. The Commission itself in March 2017 instructed Optech Eagle municipalities to remake all

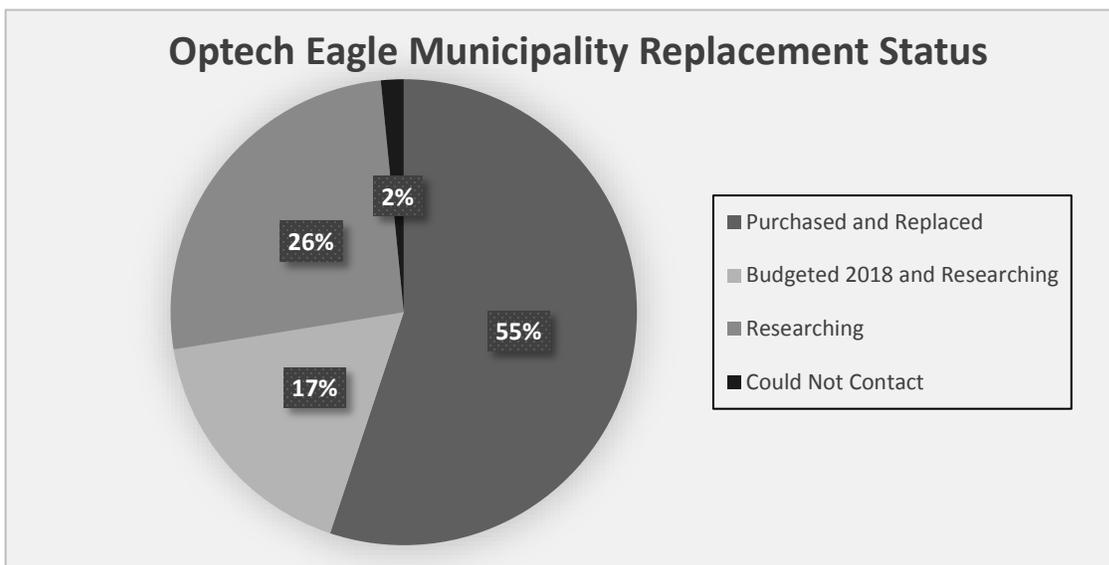
absentee ballots using an approved marking device to ensure that the selections on the ballot would be counted.

Considering that the Optech Eagle has been in service for nearly twenty years and its increasing voting equipment audit discrepancies, staff believe it is appropriate to discuss a timeline for decertification. In addition to the continued ballot marking issues, staff and municipalities which use the Optech Eagle have been informed by the vendor who provides maintenance and programming services that it will no longer support this system after 2018. The suspension of these services means that local election officials will not have essential support needed to continue to use this system to conduct elections and will not have a resource for parts and service requests. Staff recommends the Optech Eagle be decertified as of December 31, 2018. This would coincide with the end of vendor servicing and allow municipalities sufficient notice and time to procure new voting equipment to be used in 2019.

**Outreach to Impacted Jurisdictions**

In March 2017, Commission staff began contacting county and municipal clerks who still employ the Optech Eagle to determine the status of their equipment and to inquire about their ability to transition to new equipment by December 31, 2018. At that time 127 municipalities in 19 counties were still using the Eagle for tabulation purposes, representing roughly 7% of all municipalities in Wisconsin. When asked about their plans for replacement, budgeting for new equipment had been completed in 7 counties. The remainder were still researching their options or had not begun the replacement process. All 127 municipalities utilized the Optech Eagle during the 2017 spring election cycle.

In September 2017, staff once again contacted clerks in these counties and municipalities for an update regarding their replacement of the Optech Eagle. The results of this effort are represented in the pie chart below as well as in the appendix. The survey results indicate many municipalities have already completed the process of purchasing equipment and phasing out their Optech Eagle tabulators. Eleven counties, representing 70 municipalities, have taken delivery of updated equipment from Election Systems and Software or from Dominion Voting Systems, or will do so by the end of 2017, for use in the 2018 election cycle.



Of the 57 remaining municipalities in 8 counties, 28 have budgeted for the purchase of new equipment in 2018 or 2019, but are still researching replacement options. Voting equipment demonstrations have been hosted by county clerks, and municipalities (usually in coordination with their county clerk) will decide which equipment they will purchase. Twenty-nine municipalities are currently researching replacement options, but have not yet budgeted for new equipment.

All impacted clerks acknowledge they have been contacted by their Optech Eagle vendor and understand that the vendor will no longer service their Optech Eagle machines after December 2018. All the county and municipal clerks contacted by staff have agreed to discontinue use of their Optech Eagle tabulators by December 2018. Clerks further understand that if the Optech Eagle is decertified by the Wisconsin Elections Commission, it will no longer be eligible for use in any election in the State of Wisconsin. These clerks have also been invited to provide any input regarding the Commission's consideration of decertification of the Optech Eagle equipment.

Due to the suspension of vendor servicing after December 2018, the age of the Optech Eagle equipment, tabulation accuracy concerns, and inability of the equipment to determine voter intent in some circumstances, staff recommends the following motion:

**Recommended Motion:**

The Commission approves December 31, 2108 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. The Commission further directs staff to communicate this decision to each municipality and county which has Optech Eagle voting equipment currently in use.

### Appendix: County and Municipal Timeline for Optech Eagle Replacement

<b>Pierce County</b>	14 municipalities	County has hosted demos from Command Central and ES&S. Clerks have agreed to phase out the Eagle by the end of 2018. Cost is a major concern. Most plan to use Edge until able to budget for new equipment in 2018/2019.
<b>Racine County</b>	17 municipalities	Municipalities have ordered Imagecast Evolution (ICE) machines. Equipment will be delivered in late 2017. ICE implemented for 2018 election cycle. County coordinated purchase and county is reimbursed.
<b>Shawano County</b>	14 municipalities	Municipalities have already replaced Eagle units with Insight machines. Eagles have been taken out of service. Insight in use for 2018 election cycle. Municipalities purchased the new equipment.
<b>Waupaca County</b>	5 municipalities	Caledonia, New London, and Larrabee have upgraded to ICE machines. Clintonville is replacing with ICE by the end of 2017. Union is exploring replacement options. All municipalities agreed to end use of Eagle by end of 2018.
<b>Eau Claire County</b>	17 municipalities	All Eagles will be replaced by DS200 and ExpressVote systems on September 18th, 2017. The new equipment will be used in 2018 election cycle. Municipalities paid for the upgrade.
<b>Green Lake County</b>	9 municipalities	The county has had one demo from ES&S. There is a Command Central demo at the end of September 2017. Municipalities agreed to end of 2018 decertification of Eagle. Municipalities fund replacement equipment purchase.
<b>Monroe County</b>	5 municipalities	City of Tomah and City of Sparta have upgraded to ICE and Insight respectively. Other municipalities will purchase replacements in 2018 for 2019 elections.

<b>Oconto County</b>	17 municipalities	Oconto County currently has 10 Eagles in use. County plans to use Eagle through the end of 2018. In 2019 the clerk plans to use Edge and hand count ballots where allowed. She will budget in 2019 for purchase of new equipment in 2020. There is a possibility of a 2019 pilot of new equipment in 2-3 municipalities.
<b>Oneida County</b>	11 municipalities	The county hosted ES&S and Command Central demos in the summer of 2017. All municipalities will switch from Eagle by the end of 2018, with some getting new equipment late in 2017. Municipalities funded purchase of replacement equipment.
<b>Outagamie County</b>	8 municipalities	County is in the process of finalizing a vendor contract which will be completed in September 2017. All municipalities are getting new equipment for the 2018 election cycle. The funds are a 50/50 cost share between the county and municipalities.
<b>Adams County</b>	2 municipalities	Unable to contact clerk.
<b>Grant County</b>	1 municipality	City replacing with ICE machines. Delivery Nov 2017 for 2018 cycle.
<b>Jackson County</b>	1 municipality	Switched to Insight in 2016.
<b>Lafayette County</b>	1 municipality	Switched to the DS200 in June 2017.
<b>Manitowoc County</b>	1 municipality	Budgeted for 2018 purchase of Command Central equipment.
<b>Menominee County</b>	1 municipality	Unable to contact clerk.
<b>Portage County</b>	1 municipality	DS200s have been delivered for use in 2018 election cycle.
<b>Rusk County</b>	1 municipality	Still researching new equipment for 2019 rollout.
<b>Vernon County</b>	1 municipality	Replaced Eagle with Insight for 2018 election cycle.



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ADMINISTRATOR MICHAEL HAAS

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**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Administrator

**SUBJECT:** Engineering Change Order Policy

## **Background**

In 2010, the Government Accountability Board (G.A.B.) adopted a policy related to the approval of modifications to voting equipment previously approved for use in Wisconsin, including all upgrades, modifications, and other engineering change orders. The policy included conditions and requirements imposed on the equipment vendor as well as the municipalities which use the modified equipment.

The G.A.B. clarified and refined the policy in 2015 with regard to voting system modifications which a nationally accredited laboratory has found the modification to be *de minimis*. A change is considered *de minimis* if it “maintain[s], unaltered, the reliability, functionality, capability and operability of a voting system.” Examples of *de minimis* changes include replacement of a screw or replacement of an end of life component, such as a modem, which does not alter the function or use of the equipment.

The G.A.B. had several opportunities to apply the Engineering Change Order Policy but the Elections Commission has not yet received an application requesting approval for a *de minimis* change. The policy is consistent with the Commission’s Delegation of Authority which permits the Administrator, after consulting with the Commission Chair, to accept, review, and exercise discretion to approve applications for voting system modifications characterized as engineering change orders (ECOs) for systems previously approved for use in Wisconsin. To clarify the Commission’s approach to such applications which may be submitted in the future, staff requests that the Commission reaffirm the policy implemented by the G.A.B.

## **ECO Approval Policy**

The G.A.B. policy established a two-tiered approach to considering modifications to voting systems which were previously approved for use in the State of Wisconsin. The first category of applications includes those requesting approval of a modification that is classified as *de minimis* by a Voting System Test Laboratory (VSTL) accredited by the U.S. Election Assistance Commission. The

second category includes applications for approval of a modification that are significant or “non-*de minimis*.”

If the ECO policy is reaffirmed by the Commission, the vendor would be required to submit the necessary materials for the application for approval of a modification to voting systems, and staff would then make an initial determination as to whether the application involves a *de minimis* or non-*de minimis* modification to an approved voting system. Staff would provide its recommendation concerning the classification of the application to the Commission Administrator, detailing the proposed action to be taken and the basis for that action.

If the VSTL classifies the equipment modification as *de minimis*, the following process would be used:

1. Staff will determine whether it concurs with the VSTL report. If so, staff will recommend approval of the application for modification without additional testing to the Administrator. If not, staff will recommend processing the application under the non-*de minimis* category, as outlined below.
2. The Administrator will consult with the Commission Chair concerning the application and staff’s recommendation.
3. If the Administrator and Commission Chair agree the modification is *de minimis*, requiring no additional testing or full Commission approval, the Administrator will issue a letter granting approval of the equipment modification to the vendor. The Administrator shall provide a copy of the approval letter to Commission members and staff shall include a summary of the action in a report to the Commission at its next regularly scheduled meeting.
4. Upon approval of a *de minimis* change, and pursuant to EL § 7.03(1), Wis. Adm. Code, the vendor shall submit a quarterly report disclosing all of the following to the Commission for so long as the voting system containing the approved modification is in use in the State of Wisconsin:
  - (a) Jurisdiction in which a modification was made and date of modification.
  - (b) Specific identification of the modification made including, but not limited to, the identification of the specific hardware part number or firmware/software version affected.
  - (c) Identification of the specific equipment upon which a modification was made.
  - (d) If no additional modifications were made to voting systems during the time period since a vendor’s most recent quarterly report, then the vendor shall provide a letter certifying that no additional modifications were made in place of a full quarterly report.
5. If the Administrator and Commission Chair disagree with the recommendation of the staff, staff will be directed on the type of testing campaign required for approval or other information to be presented to the Commission for its consideration of the application.

If the VSTL classifies the equipment modification as non-*de minimis*, the following process would be used:

1. Staff will determine whether staff concurs with the VSTL report. If so, staff may recommend either limited testing or full testing as required for applications involving new voting systems in the State of Wisconsin.
2. If staff recommends a limited testing campaign, the Administrator will consult with the Commission Chair concerning the application and staff's recommendation to determine whether the full Commission should be consulted, prior to notification to the vendor that limited testing is required, or prior to the Administrator's approval of the application upon completion of the limited testing. The Administrator shall issue a letter informing the equipment vendor of the need for a limited testing campaign, and notify Commission members of this step either prior to or upon issuance of the letter, as determined by the Commission Chair. The testing process and conditions imposed upon equipment vendors and municipalities, which are outlined in the attached 2010 policy of the G.A.B. will be used for the limited testing.
3. Staff may recommend that the application for approval describes a non-*de minimis* modification to voting equipment and requires a full testing campaign equivalent to testing required for a new voting system. If the Administrator and Commission Chair agree with the staff's recommendation, the Administrator shall provide a letter informing the vendor of the need for full testing. In that case, staff will conduct a full testing campaign and present the results and a recommendation regarding approval to the full Commission.
4. If the Administrator and Commission Chair disagree with the recommendation of the staff, staff will be directed on the type of action is required. Additional actions include, but are not limited to: changing the testing campaign type, directing additional information to be presented to the Commission, or determining that the modification is *de minimis* and requires no additional testing.

**Recommended Motion:**

The Commission reaffirms the agency's policy as described above relating to applications for approval of modifications to voting systems already approved for use in Wisconsin, and directs staff to continue to implement the policy for such applications.

**Procedures and Conditions for Approval of Modifications to Voting Systems:  
Adopted by Government Accountability Board – March 23, 2010**

**A. Vendor**

1. Pursuant to GAB §§7.01(1)(f) and 7.03(1), Wis. Adm. Code, a vendor shall immediately notify the Government Accountability Board of any modification to a previously approved voting system. The vendor shall not offer, for use, sale or lease, any modified voting system, without prior approval of the Government Accountability Board. If the Government Accountability Board determines that the modifications are substantial, the Board may notify the vendor that the modifications require review and approval of the entire voting system pursuant to Chapter GAB 7, Wis. Adm. Code.
2. Upon application for approval of modifications to a previously approved voting system, the applicant-vendor shall pay the application fee prescribed by the Government Accountability Board. In addition, pursuant to GAB §7.01(a), Wis. Adm. Code, the vendor shall present a signed agreement that the vendor shall pay all costs, related to approval of the modifications, incurred by the Government Accountability Board, its designees and the vendor.
3. Pursuant to GAB §§7.01(1) and 7.03, Wis. Adm. Code, the application for approval of modifications to a previously approved voting system shall be accompanied by all of the following:
  - (a) Engineering Change Orders itemizing all modifications and providing complete specifications for all modified hardware, firmware, or software. Specifications shall include hardware part numbers or firmware/software versions.
  - (b) Documentation from a Voting System Test Laboratory (with an accreditation from the U.S. EAC) providing a determination of whether the modification is *de minimis*.
  - (c) If a modification is more than *de minimis*, complete testing reports from a VSTL (with an accreditation from the U.S. EAC) demonstrating that the modifications to the voting system conform to all the standards recommended by the Federal Elections Commission, NASED, and/or U.S. EAC.
  - (d) All technical manuals and documentation related to any modifications to the voting system.
  - (e) An itemization of all jurisdictions using the voting system affected by the application for approval of modifications.
  - (f) If any portion of the application or materials provided to the Government Accountability Board is copyrighted, trademarked, or otherwise trade secret, the application shall include written assertion of any protective interests, including a detailed description thereof, and redacted versions of the application and all materials consistent with any asserted protective interests.
4. Pursuant to GAB §7.03(1), Wis. Adm. Code, upon approval of any modifications to a previously approved voting system and as a condition of maintaining the Government Accountability Board's approval for the use of the voting system as modified, the vendor shall disclose all of the following to the Government Accountability Board in quarterly reports for so long as the voting system containing any approved modification is in use:
  - (a) Jurisdiction in which a modification was made and date of modification.

- (b) Specific identification of the modification made including, but not limited to, the identification of the specific hardware part number or firmware/software version affected.
- (c) Identification of the specific equipment upon which a modification was made.
- (d) If no additional modifications were made to voting systems during the time period since a vendor's most recent quarterly report, then the vendor shall provide a letter certifying that no additional modifications were made in place of a full quarterly report.

## **B. Municipalities**

Upon completion of each modification to a voting system and pursuant to GAB §7.02(2) and (3), Wis. Adm. Code, the clerk of a municipality in which a voting system was modified shall complete the following:

1. Conduct a logic and accuracy test (pre-election test) of any portion of a voting system affected by a modification to ensure that the modified voting system continues to meet the criteria set out in §5.91, Wis. Stats. This logic and accuracy test (pre-election test) shall be performed after a modification and immediately preceding and for each of the following election-types: a nonpartisan, partisan primary, general and presidential preference.
2. Upon completion of each logic and accuracy test (pre-election test,) provide a certification to the Government Accountability Board to include: the identification of the specific piece of equipment or software affected by the modification, the date of the modification, and whether the voting system passed the logic and accuracy test (pre-election test.) In no circumstance where a voting system fails the logic and accuracy test (pre-election test) shall it be used in an election without specific approval of the Government Accountability Board.
3. Following each of the first three elections after a voting system affected by a modification and in which the modified voting system or part thereof was used, perform a post-election audit, as prescribed by the Government Accountability Board, of that portion of the voting system affected by a modification. If the modified portion of the voting system was not used in an election, provide a certification of nonuse to the Government Accountability Board until such time as the portion of the voting system affected by the modification is used in an election and three post-election audits are completed.
4. Upon completion of the three post-election audits, provide a certification to the Government Accountability Board to include: the identification of the specific piece of equipment or software affected by the modification, the date of the modification, and whether the voting system passed the post-election audit.



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ADMINISTRATOR MICHAEL HAAS

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**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Administrator

Prepared and Presented by:  
Patrick Brennan, WisVote Trainer  
Sarah Statz, WisVote Specialist

**SUBJECT:** Election Cost Reports

## **Background**

As part of Phase 2 of WisVote development, Commission staff is modernizing the Wisconsin Elections Data Collections System (WEDCS). WEDCS is the method by which municipal clerks electronically submit post-election statistics such as the number and types of voters and voter registrations, types of voting equipment, and election costs. WEDCS was originally developed using a competitive federal grant and replaced a system of paper reports. Staff is reviewing the required WEDCS reports, including the EL-191 Election Specific Cost Report and the EL-192 Annual Cost Report, to decide how to best integrate them into the WisVote environment.

The former Government Accountability Board implemented the requirement to submit election cost reports in 2012 to collect statewide data of actual local costs related to the conduct of elections and specific categories of costs. The actual costs of conducting elections gained increased attention from the Legislature and the public during the recall elections of 2011 and 2012. Unlike some of the other data collected through WEDCS, Wisconsin Statutes do not specifically include election costs as data that clerks are required to report, but Wis. Stat. § 5.05(14) authorizes the Commission to request information related to election administration from county and municipal clerks. In response to concerns from clerks regarding the amount of time required to complete the cost reports, Commission staff has previously attempted to modify the process and provide clearer instructions and definitions of the cost categories.

To assist in developing a recommendation regarding the continuation of the election cost report requirements, Commission staff solicited input from clerks and other states, as well as from academics in the field of election research. Based upon this feedback as well as the agency's experience with the cost reports, Commission staff recommends modifying the cost-reporting requirements beginning in 2018 from the current annual report and two election-specific reports to a single, bi-annual report which captures cost data from the Spring and Fall election cycles, respectively. Staff recommends that the new cost reports would be due in June and December of each year, rather than the current deadlines of 30 days after an election.

## **Analysis**

Before arriving at its recommendations, Commission staff considered other options regarding the future of election cost reports, including continuing the current reporting requirements or ending the collection of cost data completely. In addition to internal Commission staff discussions, staff submitted a survey to a random selection of 212 municipal clerks and all 72 county clerks; receiving 150 responses. A short survey was also sent to other states to determine which other jurisdictions might be collecting cost data and methods used. Finally, Commission staff solicited feedback regarding the cost reports from Professor Barry Burden, professor of Political Science and Director of the Elections Research Center at the University of Wisconsin-Madison and Professor Charles Stewart III, professor of Political Science at the Massachusetts Institute of Technology.

Based on the survey of clerks, 43% of clerks indicated spending more than an hour compiling the information for the cost reports. Additionally, 64% of responding clerks indicated that they spend more time on the cost reports than they do on the EL-191 Election Statistics and Election Day Registration (EDR) Postcard reports.

One of the benefits of incorporating the WEDCS reports into the WisVote system is the potential to reduce duplicate work. Other election information such as voter registrations and voter participation is already recorded in WisVote as part of the post-election process and this data can be pulled into the WEDCS reports without requiring clerks to separately reenter the information. Currently election costs are not tracked anywhere in WisVote and clerks are required to compile and manually enter the information. This is one of the chief concerns of clerks and one reason why Commission staff believes that continuing the current cost reporting process would not be consistent with the goal of the WEDCS modernization project which is to simplify the data collection process for clerks.

In addition to the amount of time required for clerks to complete the cost reports and for Commission staff to follow up with clerks to ensure that reports are submitted, a chief concern is the reliability of the cost data. Of the clerks who responded to the Commission's survey, 47% indicated that they did not find the current reports and instructions clear and understandable, despite past efforts to improve them. Some completed cost reports also clearly demonstrate that the data is not reliable. Unlike other election statistics that are collected, the Commission lacks the means to independently verify the accuracy of cost data submitted, and must accept the information provided with no means of performing even basic data quality checks. Lack of confidence in the reliability of the data and the diminished value of such data to researchers and the public prompted Commission staff to consider the option of terminating the collection of election cost data.

Commission staff's discussions with Professors Burden and Stewart provided valuable feedback regarding data quality concerns and researchers' perspectives in balancing the availability of data with confidence in the quality of data. Wisconsin is considered one of the leaders in the collection of election cost data and they reported that other states are considering starting their own cost collection efforts based upon Wisconsin's experience. Professor Stewart addressed the concerns over data quality by pointing out such data errors are often consistent from year-to-year which still allows researchers to find patterns and draw conclusions despite potential errors in specific reports.

Professor Burden also identified a concern about ending the collection of cost data due to the potential problems associated with subsequently starting the process again if it is later deemed necessary. This concern is especially relevant when considered in the context of WEDCS modernization. If the cost collection requirement is not included in the current WEDCS project, the module will cease to exist when the current WEDCS entity is archived, and it would need to be recreated if the Commission or

Legislature later decides to reinstate the requirement. Professor Burden and Professor Stewart both supported the continued collection of election cost reports.

Available information and lessons from other states which collect election cost data was generally not applicable to Wisconsin's election administration structure. For example, Texas collects cost information for primary elections only since municipalities and counties are reimbursed for these election costs. Non-primary election costs are not reimbursed and therefore not collected. Colorado and Ohio both collect detailed cost information, but do so at the county level. North Dakota recently posted a data-file that included 30 years of election information, but costs are listed as a statewide total with no additional breakdown.

In addition to the survey and academic feedback, staff is aware of the increased public interest in more rather than less election data and specifically election cost data. In addition to the legislative and media inquiries into election costs during the recall elections of 2011 and 2012, the Commission continues to receive inquiries and legislative fiscal estimate requests which can be answered more accurately due to the collection of cost data. Without continued collection of cost data, the current data will eventually become out-of-date and prevent any useful answers or conclusions from being drawn. Finally, some clerks have reported that the exercise of tracking and compiling election cost data has been beneficial to their election administration and budgeting tasks.

Based upon these factors, Commission staff recommends revising the election cost reporting requirement so that clerks would submit reports twice a year. Rather than submitting reports after each spring election and general election as well as an annual report listing costs that are not specific to a single election, staff recommends collecting election costs twice a year. The reports would contain consistent cost categories and would be due in June and December of each year.

Staff believes the bi-annual reporting option would meet the goals of the WEDCS modernization project by simplifying and streamlining the reporting process for clerks. A bi-annual reporting process will reduce the number of reports from three to two, and will eliminate the need for clerks to track some costs by election and others on an annual basis as currently required by the existence of separate annual and election-specific reports. The cost categories would also be consistent for each report which should improve the overall accuracy of the data.

If the Commission agrees with the staff's recommendation to continue the collection of cost data in a revised manner, staff will more thoroughly review the data currently collected and develop specific report templates that would be most useful to clerks, researchers and the public. Commission staff would present the templates for the Commission's review and approval at the December 2017 Commission meeting, so that the new reports could be implemented in time for the 2018 election cycle.

**Recommended Motion:**

The Commission directs staff to revise the current election cost reporting process to require municipal clerks to submit such reports twice per year, in June and December of each year. The Commission further directs staff to develop report templates for the Commission's review at its December 2017 meeting.



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ADMINISTRATOR MICHAEL HAAS

**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Administrator

**SUBJECT:** Election Night Results Reporting

After considering the implementation of 2015 Act 261 at its March 14, 2017 meeting, the Commission directed that county clerks must post all returns on election night on the county website, including results involving local contests. At the time, the Commission was focused on the process for reporting and posting unofficial results for regular elections, where the county clerk is already required to be in the office to collect returns related to county, state and federal offices. Several county clerks have contacted Commission staff about whether this requirement applies to special elections scheduled by municipalities and school districts for this fall in which the county clerk has no role on election night and would not normally collect results for a local office or referendum contest. The Commission did not discuss that question in its previous meetings on this topic.

The requirement for county clerks to post election night results is contained in Wis. Stat. § 7.60 which is titled "County Canvass." Although the title of a statute is not determinative for legal interpretation, it supports the argument that the requirement for county clerks to post returns on election night was not intended to apply to local special elections where the county clerk is not normally on duty and the county canvass board does not canvass official results. If county clerks are required to be in their offices to collect and post those returns, they may also insist that their staff costs be reimbursed by the municipality conducting the election.

Commission staff has contacted staff of the legislative sponsors of Act 261 which created the two-hour rule for posting election night results and which highlighted the "all returns" requirement. Staff has been advised that those sponsors believe the Legislature did not intend for the requirement to apply to local special elections. Commission staff concurs with that reading of the statute and recommends that the Commission provide guidance to county and municipal clerks consistent with that interpretation.

## **Recommended Motion:**

The Commission directs 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.



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ADMINISTRATOR MICHAEL HAAS

## MEMORANDUM

**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Interim Administrator

Prepared and Presented by:  
Nathan W. Judnic  
Legal Counsel

**SUBJECT:** Administrative Rules Update

This memorandum outlines the progress made on promulgation of the agency's administrative rules since the June 20, 2017 Commission meeting. A summary chart of the status of the rules outlined below follows this memorandum (Attachment 1).

### **1. Statements of Scope - Commission Discussion and Approval**

Three (3) statements of scope have been approved by the Governor's Office and have been published in the Wisconsin Administrative Register for the required 10 days, allowing the Commission to now review these statements and direct Commission staff to commence drafting the rules based on these statements. The three statements of scope appeared in Wisconsin Administrative Register No. 741A1 published on September 5, 2017 and have been assigned their unique statement of scope number.

The Statements of Scope as approved by the Governor's Office and published in the Wisconsin Administrative Register follow this memorandum for the Commission's discussion and approval.

- 1) EL Ch. 7 (approval and security of electronic voting equipment and ballot security), SS 084-17 (Attachment 2)
- 2) EL Ch. 12 (content of municipal clerk training curriculum and maintaining records in the statewide voter registration system), SS 085-17 (Attachment 3)
- 3) EL Ch. 20 (procedures for complaints filed against local election officials under s. 5.06, Wis. Stat.), SS 086-17 (Attachment 4)

**Recommended Motion:**

The Commission approves 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.

If the Commission approves these statements of scope is obtained, the next immediate steps in the process involve the Commission staff drafting the proposed preliminary rule orders and fiscal/economic impact analyses and submitting the drafts to the Legislative Reference Bureau for pre-submission editing and drafting comments. To complete these tasks, Commission staff anticipate utilizing one of the Commission's legal interns to assist with drafting the documents and conducting research of other states' rules which is part of the required rules.

Commission staff will continue to work on preliminary draft rules on a rolling basis, and will update the Commission as new drafts are completed by copying the Commission on drafts that are sent to the Legislative Reference Bureau for pre-submission editing and drafting comments. The draft rules will be presented to the Commission for consideration after the LRB feedback is received and incorporated.

**2. Commission Approval to Draft Statement of Scope**

The Commission staff seeks permission to draft a Statement of Scope to amend current Wis. Admn. Code Ch. EL 3, to add § 3.03, relating to the treatment of online voter registration forms. When the Legislature directed the Commission to develop an online voter registration system, the same piece of legislation (Act 261) also added Wis. Stat. § 6.35(1) which directed the Commission to prescribe by rule the procedures and methods by which clerks are to maintain the registrations which are generated using the online voter registration system. The Commission staff seeks authorization from the Commission to draft a statement of scope to accomplish this rulemaking that is directed by statute.

If authorized to draft the statement of scope for this rule, Commission staff anticipates the statement being drafted and submitted to the Department of Administration for the Governor's approval prior to the Commission's December meeting.

**Recommended Motion:**

The Commission authorizes 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.

### **3. Rules in Final Draft Form Approved by Governor's Office and Submitted to Legislature**

Following the Commission's approval, two rules in final draft form were approved by the Governor's Office for submission to the Legislature. The appropriate legislative reports, including the final rule draft, economic impact statement and other required attachments were prepared and submitted to the chief clerks of the State Senate and State Assembly for 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). The rules have been referred to the appropriate standing committees in the Legislature. If there are no objections or requested modifications by the committees, the rules are then referred to the Joint Committee for the Review of Administrative Rules (JCRAR). Once there is approval from JCRAR, the rules can be finally promulgated.

The Commission staff anticipates that these two rules will be in place prior to the Commission's December meeting.

No recommended action at this time.

### **4. Legislation in Lieu of Rulemaking**

Commission staff continues to pursue legislation in lieu of the rulemaking process to address five topics: election notices, electronic proof of residence, a rarely used overseas voting procedure, amendments to address provisional voting, and defining "same grounds" in the context of care facility voting and the use of special voting deputies. Commission staff met with the chair of the Assembly Committee on Elections and her aide who reiterated an interest in drafting a bill and working with other legislators to sponsor bills to address these election topics. The state budget and the Foxconn bill have consumed much of the Legislature's time and efforts this summer, and therefore little movement on these topics has occurred despite assurances that there is an interest to address these topics with legislation. Commission staff will continue to work with legislative staff to keep this process moving in the right direction.

Commission staff anticipates significant progress on securing legislation to address these topics prior to the Commission's December meeting.

No recommended action at this time.

### **5. Preliminary Rule Drafts in Progress**

Four rules are currently in the preliminary rule draft stage of the rulemaking process. These rules were approved for drafting at the Commission's June meeting. Progress has been made on the drafting of new EL Ch. 4 relating to Election Observers. The preliminary rule draft order sent to the Legislative Reference Bureau for pre-submission editing and comments on this rule is included in

the Commission's supplemental materials. Commission staff will continue to work on preliminary draft rules on a rolling basis, and will update the Commission as new drafts are completed by copying the Commission on drafts that are sent to the Legislative Reference Bureau for pre-submission editing and drafting comments.

#### **6. Rules on Hold Pending *One Wisconsin* Decision**

There has been no progress on repealing portions of EL § 3.10, 3.11, 3.12 and 3.20 relating to special registration deputies due to the pending 7<sup>th</sup> Circuit Court of Appeals decision in the *One Wisconsin* case.

The Commission staff anticipates a ruling from the 7<sup>th</sup> Circuit Court of Appeals on this case before the end of the year. Once the ruling is issued, Commission staff will assess if repealing portions of EL Ch. 3 will still be necessary.

No recommended action at this time.

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MARK L. THOMSEN, CHAIR

## Attachment 1: Administrative Rules Status

Rule No.	Topic	Status
EL Ch. 6	Procedure	Referred to Elections Committees in Senate and Assembly for review
EL Ch. 21	Practice of Procedure	Referred to Elections Committees in Senate and Assembly for review
EL Ch. 4	Election Observers	Drafting preliminary rule order and fiscal estimate to submit to LRB for pre-submission edits and comments (See Attachment 5)
EL 3.60	Absentee Ballot Subscription Service	Drafting preliminary rule order and fiscal estimate to submit to LRB for pre-submission edits and comments
EL Ch. 13	Training for Election Inspectors and Special Voting Deputies	Drafting preliminary rule order and fiscal estimate to submit to LRB for pre-submission edits and comments
EL 6.06	Curbside Voting Procedures	Drafting preliminary rule order and fiscal estimate to submit to LRB for pre-submission edits and comments
EL Ch. 7	Voting Equipment Security and Voting Equipment Approval	Seeking approval from Commission to draft preliminary rule order and fiscal estimate
EL Ch. 12	Maintaining Records in Statewide Voter Registration System	Seeking approval from Commission to draft preliminary rule order and fiscal estimate
EL Ch. 20	Complaint Procedure	Seeking approval from Commission to draft preliminary rule order and fiscal estimate
EL 3.10, 3.11, 3.12, 3.20	Removal of Special Registration Deputy References	On hold pending <i>One Wisconsin</i> appeal
EL Ch. 8	Election Notices	Pursuing legislation in lieu of rulemaking.
EL 3.015	Electronic Proof of Residence	Pursuing legislation in lieu of rulemaking.
EL Ch. 17	Overseas Voting Procedure	Pursuing legislation in lieu of rulemaking.
EL 3.04(2)	Provisional Voting	Pursuing legislation in lieu of rulemaking.

EL 6.07	Definition of Same Grounds	Pursuing legislation in lieu of rulemaking.
EL 3.03	Treatment of Online Voter Registration Forms	Seeking permission from Commission to draft Statement of Scope

## Attachment 2

### STATEMENT OF SCOPE PURSUANT TO WIS. STAT. § 227.135 WISCONSIN ELECTIONS COMMISSION

**Rule No.:** EL Ch. 7 - Approval and Security of Electronic Voting Equipment and Ballot Security

**Relating to:** Approval and Security of Electronic Voting Equipment and Ballot Security

**Rule Type:** Permanent

1. **Finding/nature of emergency (Emergency Rule only):** N/A
2. **Detailed description of the objective of the proposed rule:**

The Wisconsin Elections Commission (“Commission”) proposes to repeal, recreate and rename current Wis. Adm. Code EL Ch. 7 – Approval of Electronic Voting Equipment (“EL Ch. 7”), related to the approval of electronic voting equipment. The original rules governing this topic have not been substantively updated since 2000. The Commission seeks to update the rules which govern the approval of electronic voting equipment to bring them in line with current technology, modes and practices. The new rule will also address ballot and electronic voting system security which was the topic of an emergency rule that has since expired (former Wis. Adm. Code GAB Ch. 5 – Ballot and Electronic Voting System Security). A previous Government Accountability Board statement of scope to repeal and recreate Wis. Adm. Code GAB Ch. 7 was approved in 2015 (SS 046-15). With the Wisconsin Elections Commission beginning operations on June 30, 2016, the Commission now resubmits this statement of scope to repeal and recreate current EL Ch. 7 and incorporate former GAB Ch. 5 to govern these important topics.

3. **Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

#### Existing Policy:

Current EL Ch. 7 was originally published in 2000 (under different chapters based on the agency that oversaw elections at that time) and has not been amended except for renumbering and a correction in 2008. (Register April 2008 No. 628). EL Ch. 7 currently establishes a number of criteria which must be met for an electronic voting system to be approved for use in Wisconsin. It does not include guidelines to address technological and policy issues that have arisen in recent years, such as approval of engineering change orders, commercial off the shelf systems, approval of new components for equipment that was previously federally certified and approved for use in Wisconsin and other equipment that has not been federally certified.

Proposed Policy:

The Commission seeks to update the rules which govern the approval of electronic voting equipment to bring them in line with current technology, modes and practices. The recreated rules would include guidelines to address technological and policy issues that have arisen in recent years, such as approval of engineering change orders, commercial off the shelf systems, approval of new components for equipment that was previously federally certified and approved for use in Wisconsin and other equipment that has not been federally certified. The rules would also ensure the security, review and verification of software components used with each electronic voting system approved by the Commission. The verification procedures will ensure that the software components correspond to the instructions used by the system to count votes. Additionally, provisions governing security of electronic voting equipment and ballots would be incorporated into the new rule, which were previously in place under a separate emergency rule which has since expired.

Alternatives:

If the Commission does not repeal and recreate current EL Ch. 7, current out of date provisions governing the approval of electronic voting equipment would remain in the rule. The Commission could again promulgate a separate chapter of rules dealing with electronic voting equipment and ballot security instead of combining it with the procedures used to test and approve electronic voting equipment used in this State. In addition, policies and procedures enacted by the elections agency related to these topics would not have the force of law afforded by an administrative rule and the legislative oversight of the rules process.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Wis. Stat. § 5.05(1) states that the Elections Commission “shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.” Pursuant to such responsibility, the Elections Commission may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than campaign financing, or ensuring their proper administration.” Wis. Stat. § 5.05(1)(f).

Wis. Stat. § 5.93, expressly authorizes the board to “promulgate reasonable rules for the administration of this [Electronic Voting Systems] subchapter.”

Wis. Stat. § 5.905(3) states that the Elections Commission “shall promulgate rules to ensure that the security, review and verification of software components used with each electronic voting system approved by the commission.”

Wis. Stat. § 5.87(2) states that the Elections Commission “shall, by rule, prescribe uniform standards for determining the validity of votes cast or attempted to be cast with each electronic voting system approved for use in this state under s. 5.91. The rules shall apply only to situations that may arise in which the validity of a vote or attempted vote cast by an elector utilizing a particular system cannot be determined under s. 7.50.”

Wis. Stat. § 7.08(1)(d) states that the Elections Commission shall “[p]romulgate rules for the administration of the statutory requirements for voting machines and electronic voting systems and any other voting apparatus which may be introduced in this state for use at elections.”

**5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

300 - 350 hours.

**6. List with description of all entities that may be affected by the proposed rule:**

This rule will affect manufacturers and vendors of electronic voting equipment, vendors that provide programming of electronic voting equipment, local election officials including county and municipal clerks, election inspectors and voters.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The U.S. Election Assistance Commission (“EAC”) operates a voting system testing and certification program which certifies, decertifies and recertifies voting system hardware and software and accredits testing laboratories to conduct the testing. Voting systems are tested at the federal level to determine if they meet the guidelines and specifications set forth in the Voluntary Voting System Guidelines (VVSG). Documentation, including proof that a system has obtained EAC certification is submitted to the Wisconsin Elections Commission as part of the application process to obtain State certification.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The anticipated economic impact from the implementation of the new rules is minimal to none. Voting equipment vendors are already required to pay the actual cost of the testing campaign that the State conducts prior to certification. Nothing in the new rule is

anticipated to significantly impact that requirement. Rather the rule will primarily formalize existing procedures and requirements of the State voting equipment approval process. The proposed rules will not affect small businesses.

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Michael Haas  
Administrator  
Wisconsin Elections Commission

August 15, 2017  
Date Submitted

**STATEMENT OF SCOPE  
PURSUANT TO WIS. STAT. § 227.135  
WISCONSIN ELECTIONS COMMISSION**

**Rule No.:** EL Ch. 12 Certification and Training of Municipal Clerks

**Relating to:** Content of Municipal Clerk Training Curriculum and Maintaining Records in the Statewide Voter Registration System

**Rule Type:** Permanent

1. **Finding/nature of emergency (Emergency Rule only):** N/A
  
2. **Detailed description of the objective of the proposed rule:**

The Wisconsin Elections Commission (“Commission”) proposes to amend Wis. Adm. Code EL Ch. 12 (“EL Ch. 12”), relating to responsibilities of clerks maintaining records in the Commission’s WisVote System. Audits of the Commission’s predecessor agencies conducted by the Legislative Audit Bureau in 2007 and 2014 generated recommendations relating to the maintenance of records contained in the statewide voter registration system. Specifically, the 2014 audit generated a recommendation that “the agency promulgate rules that formalize the procedures clerks use to maintain voter registration records, including inactivating the records of individuals who become ineligible to vote and mailing letters to notify these individuals that their records have been inactivated.” While Commission manuals and detailed instructions are provided to clerks on this topic already, some amendments to current Wis. Adm. Code Ch. EL 12 will be made to include this topic as a core competency of municipal clerk training curriculum provided by the Commission.

3. **Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Existing Policy:

Municipal clerks are required to attend elections training sponsored by the Commission at least once every two years. The core topics of the municipal clerk training is codified in current Wis. Adm. Code EL § 12.04. The Commission currently provides local election officials with detailed manuals and instructions on the processes and procedures used to maintain voter registration records in the WisVote system but those procedures are not part of the core curriculum provided by the Commission. A voter’s registration record can be updated in the WisVote system for a variety of reasons, some voter-initiated and some election official-initiated. Wisconsin statutes provide for the matching of records against various databases and to inactivate a voter’s record if they no longer meet voter eligibility requirements (death records and felon records). Other checks against databases maintained by the Department of Transportation and the Social Security Administration

(“HAVA Checks”) are conducted to ensure accuracy of the information provided by the voter, but discrepancies do not affect a voter’s ability to remain active and vote. Voters that no longer reside at the address for which they are registered to vote may be changed to inactive if the statutory process for voter notification is followed. Additionally, Wisconsin statutes provide that a voter’s record shall be inactivated if they have not voted in any election in a 4-year period if they were qualified to do so.

Proposed Policy:

The Commission proposes to amend current provisions in Wis. Adm. Code Ch. EL 12 to include voter registration list maintenance and procedures as a core training element which the Commission staff provides to municipal clerks. The amendments will be made to the municipal clerk training content portions of the rule currently in place.

Alternatives:

If the Commission does not amend Wis. Adm. Code Ch. EL 12, the current procedures will remain in clerk manuals and communications but will not be included in the current rule as required training content for municipal clerks.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Wis. Stat. § 7.31(2) states that the Elections Commission “shall, by rule, prescribe requirements for, and the content of, training required of municipal clerks under s. 7.15(1m).” Wis. Stat. § 5.05(1) states that the Elections Commission “shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.” Pursuant to such responsibility, the Elections Commission may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than campaign financing, or ensuring their proper administration.” Wis. Stat. § 5.05(1)(f).

**5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

50 - 80 hours.

**6. List with description of all entities that may be affected by the proposed rule:**

The proposed rules will affect municipal clerks in that a new core element of municipal clerk training will be added to the current curriculum.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The proposed rule simply adds a core requirement to the municipal clerk training curriculum. The Commission is not aware of any existing or proposed federal regulation that is applicable.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The anticipated economic impact from the implementation of the proposed rules is none. The proposed rules will not affect small businesses.

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Michael Haas  
Administrator  
Wisconsin Elections Commission

July 25, 2017  
Date Submitted

**STATEMENT OF SCOPE  
PURSUANT TO WIS. STAT. § 227.135  
WISCONSIN ELECTIONS COMMISSION**

**Rule No.:** EL Ch. 20 Complaint Procedure

**Relating to:** Procedures for Complaints Filed Against Local Election Officials Under Wis. Stat. § 5.06

**Rule Type:** Permanent

1. **Finding/nature of emergency (Emergency Rule only):** N/A
2. **Detailed description of the objective of the proposed rule:**

The Wisconsin Elections Commission (“Commission”) proposes to amend Wis. Adm. Code Ch. EL 20 (“EL Ch. 20”), relating to complaint procedure. This code chapter is a carryover from rules originally promulgated by the State Elections Board, then transferred to the Government Accountability Board and now to the Commission. Complaints are generally filed with the Commission under two statutory provisions, either Wis. Stat. § 5.05(2m) or Wis. Stat. § 5.06. Complaints filed with the Commission under Wis. Stat. § 5.05(2m) are to allege violations of Wis. Stat. chs. 5 to 10 or 12. While complaints to the Commission are allowed under Wis. Stat. § 5.061, the Commission has never received any such complaints. For complaints filed under Wis. Stat. § 5.05(2m), the statute provides that the Commission shall notify each person that is alleged of committing a violation within 5 days of receipt. Wis. Stat. § 5.05(2m)(c)2.a. Each individual that receives notice from the Commission shall be provided an opportunity to respond to the complaint in writing within 15 days to demonstrate why the Commission should take no action on the complaint. *Id.* Complaints filed with the Commission under Wis. Stat. § 5.06 allege that a local election official has not complied with applicable election laws in making a decision or taking an action, or the official abused their discretion in making a decision or taking an action. With the exception of Wis. Stat. § 5.06(3), which states that a complaint shall be filed promptly so as not to prejudice the rights of any party – and in the case of a decision made related to nominations, candidate qualifications or ballot preparation no later than 10 days after the complainant knew or should have known of the alleged violation – the statute does not provide specific deadlines or procedures for local election official complaints. An Editor note currently inserted into EL Ch. 20 alerts individuals that the complaint procedures set forth in Wis. Stat. § 5.05(2m) supersedes the administrative code chapter, and that the chapter only applies to complaints filed under Wis. Stat. § 5.06. Amendments to EL Ch. 20 will be made to remove and modify provisions of this chapter to focus solely on complaints filed under Wis. Stat. § 5.06 which include: clarifying if and when parties are entitled to appear before the Commission; clarifying if and when an evidentiary hearing is conducted by the Commission; removing provisions related to party settlements as that is not applicable to complaints filed against local election officials; and the processes used by the Commission and its staff to issue decisions.

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

Existing Policy:

Complaints filed with the Commission are either filed under Wis. Stat. § 5.05(2m) or Wis. Stat. § 5.06. If a complaint is filed under Wis. Stat. § 5.05(2m), the procedures and timelines within that statutory section are followed. For complaints filed against local election officials under Wis. Stat. § 5.06, the applicable procedures and timelines contained in current EL Ch. 20 are followed.

Proposed Policy:

The Commission proposes to amend current EL Ch. 20 to remove and modify provisions of this chapter to focus solely on complaints filed under Wis. Stat. § 5.06 which include: clarifying if and when parties are entitled to appear before the Commission; clarifying if and when an evidentiary hearing is conducted by the Commission; removing provisions related to party settlements as that is not applicable to complaints filed against local election officials; and the processes used by the Commission and its staff to issue decisions.

Alternatives:

If the Commission does not amend EL Ch. 20, provisions not applicable to complaints filed under Wis. Stat. § 5.06 will remain, which has caused confusion in the past and could continue to cause confusion for individuals looking to file a complaint with the Commission.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Wis. Stat. § 5.05(1) states that the Elections Commission “shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.” Pursuant to such responsibility, the Elections Commission may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than campaign financing, or ensuring their proper administration.” Wis. Stat. § 5.05(1)(f).

**5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

80 - 100 hours.

**6. List with description of all entities that may be affected by the proposed rule:**

The proposed changes will affect individuals who file complaints with the Commission under Wis. Stat. § 5.06, alleging a local election official failed to comply with an election law or abused their discretion in administering an election law.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The proposed rule deals with the procedures used to file and process complaints filed with the Commission against local election officials. The Commission is not aware of any existing or proposed federal regulation that is applicable.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The anticipated economic impact from the implementation of the proposed rules is none. The proposed rules will not affect small businesses.

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Michael Haas  
Administrator  
Wisconsin Elections Commission

July 27, 2017  
Date Submitted

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ADMINISTRATOR MICHAEL HAAS

## MEMORANDUM

**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Interim Administrator

Prepared and Presented by:  
Nathan W. Judnic  
Legal Counsel

**SUBJECT:** Legislative Agenda – Outstanding Recommendations

### Background

At its March 14, 2017 meeting, the Commission adopted several recommendations for the Legislature to consider during the 2017 – 18 session. Those recommendations have been passed along to members of the Legislature and the Commission staff have had several productive conversations with the Legislature and legislative staff about introducing legislation to address some of the recommended items. Based on those conversations it appears that the Legislature may be open to considering additional items recommended by the Commission.

### Overseas Voter Issue

At its June 20, 2017 meeting, the Commission’s discussion of the legislative agenda was mainly focused on the letter received from the Federal Voting Assistance Program (FVAP) concerning Wisconsin’s definition of “overseas voter.” Specifically, FVAP believes that Wisconsin Statutes should permit temporary overseas voters to obtain a ballot by electronic means and to cast votes using the Federal Write-In Absentee Ballot (FWAB), both of which currently apply to permanent overseas voters. The Commission staff still believes the request of FVAP is more appropriately considered as a policy decision of the Legislature as it has previously defined the qualifications of a federal “overseas voter.”<sup>1</sup> Similarly, the Legislature has by statute limited the acceptable delivery methods for absentee ballots and the use of the FWAB in casting a ballot to overseas voters that meet the

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<sup>1</sup> Wis. Stat. § 6.24(1) DEFINITION. In this section, except as otherwise provided, “overseas electors” means a U.S. citizen who is not disqualified from voting under s. 6.03, who has attained or will attain the age of 18 by the date of an election at which the citizen proposes to vote and who does not qualify as a resident of this state under s. 6.10, but who was last domiciled in this state or whose parent was last domiciled in this state immediately prior to the parent’s departure from the United States, and who is not registered to vote or voting in any other state, territory or possession.

definition contained in Wis. Stat. § 6.24(1). See Wis. Stat. §§ 6.24(4) and 6.25. In conversations with the Legislature about this issue, it is possible that legislation may be considered to address the concerns of FVAP and modify current statutes to address any inconsistencies between Wisconsin law and the federal laws that address overseas voters.

The Commission staff recommends that the Commission formally include this issue in the next iteration of legislative recommendations forwarded to the Legislature, requesting that it address any inconsistencies between Wisconsin law and the federal laws that address overseas voters.

### **Outstanding Recommendations**

The remainder of this memorandum lists outstanding staff recommendations which the Commission has not yet addressed. The remaining items were included in the staff memorandum for the March 14, 2017 and June 20, 2017 Commission meetings.

Commission staff maintains an ongoing list of recommended changes to current laws identified by legislators, municipal and county clerks, and the public. Staff also regularly reviews and analyzes current statutes, administrative code, and Board policies to identify potential changes that may improve efficiency, cost-effectiveness, public comprehension, and general policy administration. The recommended changes below are those which staff believes would improve administrative processes, provide clarity or simplification to existing policies and procedures, or update policies to reflect modern practices.

Staff has organized the recommendations into three different categories:

1. *Major Policy Initiatives* are those that staff suggests that the Commission highly recommend because they would likely significantly improve election administration and have a substantially positive impact on those affected by the policy, or policies for which the Government Accountability Board previously demonstrated strong support.
2. *Minor Policy Initiatives* include the changes that would improve election administration and represent minimal policy decisions, such as improving efficiency or providing clarity.
3. *Technical Changes* are recommendations that address issues of inconsistency in the laws or drafting oversights.

### **MAJOR POLICY INITIATIVES**

1. Chapter 5 Subchapter III – Voting Equipment Statutes. This subchapter of the statutes refers to antiquated technologies such as voting equipment that utilizes levers or punch cards. These types of voting systems have been entirely replaced by electronic voting systems. The Legislature could revise this subchapter to remove references to antiquated technology. There are also references to such antiquated voting equipment elsewhere throughout the election laws. The Legislature could consider a broader review and revision of state law to reflect the electronic voting equipment currently in use throughout the State of Wisconsin, as well as the potential use of new technologies in the future.

2. § 6.86(1)(b). This provision sets forth the deadlines for requesting an absentee ballot. Under existing law there are three different deadlines (Thursday, Friday, or Election Day) for requesting an absentee ballot that depend on both the type of absent elector and the method by which the application is received. This multitude of deadlines has proven confusing for voters and election officials alike. The Election Day deadline for receipt of an absentee request also creates an unrealistic expectation that a ballot requested at such a late date could be successfully voted as the deadline for receiving the voted ballot is also Election Day and electronic transmission of the voted ballot is not permitted by state law. The Legislature could consider revising these deadlines by changing the deadline to 5:00 p.m. on the Thursday prior to Election Day for all mailed, emailed, or faxed requests and 5:00 p.m. or close of business on Friday for all in-person requests regardless of the type of absent elector.

### **MINOR POLICY INITIATIVES**

#### **Chapter 5**

3. §§ 5.06(5) and (6). These provisions allow the Commission to issue an order to ensure compliance with election laws. The Legislature could revise these provisions in order to authorize the Commission to issue a temporary order while a complaint investigation is ongoing. Occasionally Commission staff must direct a local election official to stay any action until the completion of a review investigation, such as when the question is whether to schedule a recall election or whether a candidate has qualified for ballot access. Current statutes allow the issuance of an order only after the filing of a complaint, upon a motion of the Commission, or after completion of an investigation.
4. § 5.06(10). This provision prohibits the Commission from reviewing matters arising in connection with recounts under § 9.01. This appears to be intended to avoid conflict with Wis. Stat. § 9.01(6) which directs appeals of recounts to circuit court. However, there are a variety of decisions made by election officials under § 9.01 that could benefit from commission review, e.g., estimates of recount filing fees. A better option may be to phrase this provision such that the Commission may not review the recount result or substantive decisions of the board of canvassers in a recount other than to enforce consistent application of those decisions when multiple boards of canvassers are involved. This authority would permit Commission staff to resolve procedural questions or conflicts more definitively and is supported by the charge of Wis. Stat. § 9.01(10) for the Commission to develop standard forms and procedures for use in recounts.
5. §§ 5.15 and 66 subchapter II. These provisions provide limitations to the construction of wards. Current statutes restrict a town from drawing ward lines that do not cross the boundaries of a state assembly district, and requires towns to create a separate ward when a county does not adjust boundaries for county supervisory districts. However, statutes do not place similar restrictions on cities or villages annexing territory. This could be a problem if a city or village was to annex territory in different districts. The Legislature could revise these provisions to

enact the same requirements for cities and villages that currently exist for towns and require specifying the identification of the created ward (e.g., ward 7).

6. § 5.84(1). This provision specifies that municipalities must conduct public tests of voting equipment in the 10 days prior to each election. The current requirement is problematic as larger municipalities may require several days to test all the equipment to be used at an election. Extending the testing window to the 15 calendar days prior to the election would grant municipal clerks more flexibility in the event any problems are identified during the public test. This provision also requires public notice of voting equipment testing via publication in a newspaper within the municipality or a newspaper of general circulation therein. Publishing in a general circulation newspaper, or even a municipal newspaper, may require significant costs to municipalities. The Legislature could revise this provision to require municipalities to provide the notice of the public test by the same means as other election notices under Wis. Stat. §§ 10.04 & 10.05, which would permit such notices to be posted in lieu of publication.
7. § 5.94. This provision requires the publication of a sample ballot. Wis. Stat. §10.02 (2)(c) allows the ballot size to be reduced when publishing the notice. The Legislature could consider removing the requirement for an “actual-size” copy of the ballot for publication in Wis. Stat. § 5.94 to reduce the costs that jurisdictions must incur and make these two provisions consistent.

## **Chapter 6**

8. § 6.18. This provision provides a process for former Wisconsin residents to vote in a Presidential Election if they do not yet qualify to vote in their new state of residency, but does not provide a specific deadline for such a request. The Legislature could revise this provision by establishing a receipt deadline of 5:00 p.m. on the fifth day before the election to request an absentee ballot, consistent with most other absentee voters.
9. §§ 6.22(1)(b), 6.34(1)(a). These provisions define the term “military elector”. However, § 6.22(1)(b) includes additional categories of individuals not included under 6.34(1)(a). These two different definitions of the same term have caused considerable confusion with clerks and military voters as to what they can or cannot do. The G.A.B. has previously recommended reconciling these two different definitions into a single broad definition of military elector. To avoid confusion and promote effective administration of the laws, the Legislature could harmonize these two definitions as the G.A.B. has previously recommended throughout Chapter 6.
10. § 6.22(6). This provision requires each municipal clerk to keep an updated list of eligible military electors that reside in the municipality in the format provided by the commission, and to distribute a copy the list to each polling place. The intent of this provision was to ensure compliance with absentee ballot procedures for military voters and the exemption from the voter registration requirement. In practice, all of the required information exists within WisVote and all known military voters automatically appear on the poll books. Clerks who rely on someone else for WisVote services communicate with their WisVote provider for lists prior to absentee voting. The Legislature could repeal this provision to reflect modern practices.

11. § 6.25(1)(c). This provision exempts military electors from the requirement to submit a separate absentee request before the Federal Write-In Absentee Ballot (FWAB) may be counted. Overseas electors are not similarly exempted from the requirement to submit a separate absentee request in addition to the FWAB before the ballot may be counted. The declaration/affirmation page of the FWAB contains all the necessary information to serve as an absentee request. Permanent overseas voters face many of the same difficulties voting as overseas military voters. The Legislature could modify this provision to allow permanent overseas voters to submit a FWAB without a separate absentee ballot application no later than the applicable absentee request deadline in order to establish a more consistent process for all overseas voters.
12. § 6.29(2)(b). This provision requires municipal clerks to prepare a certificate of registration in duplicate and provide one copy of the certificate to any person registering during the late registration period while keeping the other in their office. Commonly late registrations in-person are immediately followed by a request to vote an in-person absentee ballot. In this scenario, the preparation and issuance of the certificate of registration has no purpose. The Legislature could consider exempting clerks from the requirement to issue registration certificates if the voter chooses to vote absentee in the clerk's office in the same transaction as registering to vote.
13. § 6.29(2)(c). This provision requires any voter who registered to vote during the late registration period and receives a certificate of registration to provide that certificate to the inspectors at the polling place or to enclose that certificate with their voted absentee ballot. However, state law does not specify a consequence if the elector fails to provide their certificate of registration. It appears that the certificate is intended as a failsafe to prove registration has occurred in the event that the voter's name does not appear on the poll book despite their earlier registration. As such the Legislature could consider removing the requirement for the voter to provide their certificate of registration, but preserve the issuance of such certificates to maintain the failsafe.
14. § 6.30(4). This provision requires that municipalities make available a voter registration form and that "the form shall be pre-postpaid for return when mailed at any point within the United States." However, in practice, most municipalities simply make copies of the form available and do not offer pre-paid postage because of the cost. Additionally, the Commission has implemented online registration as directed by the Legislature, which may significantly reduce the demand for registration by mail. Due to the cost to municipalities and the online alternative the Legislature could consider elimination of the prepostpaid requirement for voter registration forms.
15. § 6.32(4). This provision requires a municipal clerk to send an address verification mailing to a voter who registers by mail or online. In practice, the Commission sends these mailings on behalf of municipalities. This facilitates consistent compliance and leveraging State purchasing power. During the 2013-2014 Legislative Session, the Wisconsin Legislature enacted 2013 Wisconsin Act 149, specifically authorizing the G.A.B. to send out the Election Day Registrant address verification mailings. The Legislature could revise this provision to authorize the Commission to send out all other address verification mailings, including those related to the ERIC initiative, on behalf of municipalities.

16. § 6.34(3)(a)10. This provision allows for using a paycheck as proof of residence. As many voters do not receive a physical paycheck anymore, the G.A.B. previously interpreted this provision to include pay stubs, pay sheets, or other payroll documentation such as a direct deposit statement. The Legislature could revise this provision to also include these more modern alternatives to the paycheck and reinforce the agency's prior interpretation.
17. § 6.55(2)(d). This provision provides for a voter who has changed their name, but not their address to make such a change in their registration by notifying the election inspectors at the polling place instead of completing a new voter registration form. The Government Accountability Board consistently required voters who wish to change their name to complete a new voter registration. When the Legislature repealed § 6.40, it removed a provision that permitted voters to make changes to their registration without submitting a new registration form. The Legislature could ensure that every change in a voter's registration is documented with a new voter registration form by modifying this provision to eliminate the ability of a voter to change their name without providing a new voter registration form.
18. § 6.82(1). This provision permits an elector who is unable to enter the polling place due to a disability to receive their ballot at the entrance to the polling place. While this provision does not directly speak to whether this elector must sign the poll book, G.A.B. staff interpreted this provision to allow such electors to receive a ballot without signing the poll list because to qualify for the procedure a voter must be prevented from entering the polling place due to a disability and § 6.79(2)(am) specifically authorizes the election inspectors to waive the signature requirement if the elector is unable to sign due to disability. To clarify the procedure, the Legislature could specifically direct that an elector voting under this provision is exempt from signing the poll book.
19. § 6.82(2). This provision permits an elector to receive assistance in marking the ballot. When voting with a physical ballot, the assistant is required to sign a certification on the back of the ballot that indicates the ballot was marked with their assistance. Where voting machines are used, this provision requires the assistant to certify on the registration list that the ballot was marked with his or her assistance. As voting machines are specifically designed to provide a voter with disabilities the opportunity to vote privately and independently, staff has previously directed that a voter who requires assistance with a voting machine be required to vote using a physical ballot. To clarify this procedure, the Legislature could specifically direct that an elector who requires assistance using a voting machine be required to vote on a physical ballot with the assistance of a person of the voter's choice other than their employer or agent of their labor union.
20. § 6.86(2)(b). This provision requires a clerk to send a 30-day notice to indefinitely confined voters that do not return their absentee ballot in order to stay on the "permanent absentee" voter list. However, there is not sufficient time between primaries and the subsequent general elections to do so and staff has previously advised clerks that such notice is only required after a general election. The Legislature could consider revising this section to recognize this practical impossibility and only apply this requirement to non-primary elections.

21. § 6.87(3)(d). This provision allows military and permanent overseas voters to receive their absentee ballot electronically. Voters who are temporarily overseas do not receive this transmission option and therefore must request their ballot significantly earlier to account for the additional time it will take for the blank ballot to reach them. The Legislature could consider revising this provision to allow temporary overseas voters to receive their ballot electronically in order to increase the opportunity for those voters to receive and return their ballot in a timely manner.
22. § 6.875. This provision covers absentee voting procedures involving special voting deputies (SVDs). This section does not specify whether a municipal clerk must issue a 30-day notice to renew their absentee ballot request as an indefinitely confined voter if the voter declines to vote via SVD. The Legislature could clarify this section by stating that the voter may decline to receive their ballot on a form prescribed by the Commission, as well as indicate if they wish to remain on the list of indefinitely confined voters (“permanent absentees”). This is current practice and is included in the Commission’s SVD manual.
23. §§ 6.875(4)(b), 7.30(4). Wis. Stat. § 6.875(4)(b) sets forth the process by which individuals are appointed as special voting deputies. The process is similar to the process for appointing election officials generally as set forth in Wis. Stat. § 7.30(4), but does not specifically state that the process of 7.30 applies to these appointments. Staff have interpreted § 7.30(4) to include special voting deputies, but the Legislature could modify § 6.875(4)(b) or 7.30(4) to make this more clear.
24. § 6.97. This provision provides the option for a voter to cast a provisional ballot whenever they are required to provide proof of residence and cannot provide such documentation. Agency staff has interpreted this provision to only apply to persons who registered to vote on or before April 4, 2014 to coincide with when the G.A.B. directed clerks to stop accepting voter registrations that were missing proof of residence. After the few remaining voters in the statewide voter registration system who are still missing proof of residence provide such documentation or are removed from the list, this provision will no longer be necessary and the Legislature may wish to remove this language to avoid the impression that a provisional ballot would be an option for new registrants who do not have a proof of residence.

## **Chapter 7**

25. § 7.25. This section enumerates the duties of election officials in using “voting machines”. Voting machines are defined in 5.02(24r) as “a machine which serves in lieu of a voting booth and which mechanically or electronically records the votes cast by electors, who depress levers or buttons located next to the choices listed on a ballot to cast their votes.” Wisconsin no longer uses mechanical voting systems like lever voting machines and this section should be updated to reflect current practices and technology.
26. § 7.30(2). This provision sets forth the qualifications to be appointed as an election official. It specifically states that in 1<sup>st</sup> Class cities (Milwaukee) election inspectors may not hold any other public office except notary public. Board staff has discovered that other municipal officials may also be prohibited from serving as election inspectors due to specific provisions of municipal law

or due to the incompatibility of office doctrine. The Legislature could consider modifying this provision to specifically list those public officials in other municipalities that also may not serve.

27. § 7.50(2). The Legislature recently removed language in this section related to the counting of write-in votes cast by affixing a sticker to the ballot (see 2015 Act 37). However, the Legislature did not affirmatively prohibit the use of such stickers by write-in candidates. As Wis. Stat. § 7.50(2) still requires election officials to count an elector's vote for the person which the voter intended, agency staff has advised election officials to continue counting votes for candidates whose voters use stickers to write-in that candidate's name. The Legislature may wish to revisit this section to more explicitly address this scenario.
28. § 7.50(2)(em). 2013 Wisconsin Act 178 amended this provision to state that all votes for write-in candidates shall be tallied if a candidate on the ballot dies or withdraws before the election. However, Wisconsin Statutes do not provide a procedure for candidates to withdraw. The Legislature could correct this issue by striking "*or withdraws*" from this provision or specifying what constitutes a candidate's withdrawal.
29. § 7.60(5)(a). This provision requires county clerks to deliver or transmit to the Commission a certified copy of each county board of canvass statement. In current practice, county clerks use the Commission's Canvass Reporting System (CRS) to generate those statements using their secure login credentials, and then mail a signed copy of that report to the Commission. The Legislature could modernize this provision by adding the language *in the manner prescribed by the commission after the county clerk shall deliver or transmit*, or consider replacing the word *certified* with *electronically signed*. In 2014, the Legislature made a similar change, allowing political committees to sign their campaign finance reports electronically when certifying that information to the G.A.B.

## Chapter 8

30. §§ 8.10(5), 8.15(4)(b), and 8.20(6). These provisions outline the filing requirements for candidates, including their declaration of candidacy, nomination papers, and statement of economic interest (SEI). Under current statutes, candidates are not required to file their SEI until 4:30 p.m. the third day after the deadline for the other documents. The Legislature could consider changing the deadline to file an SEI to match filing of declaration of candidacy and nomination papers. This would provide a consistent deadline that could improve administrative efficiency and public awareness of candidates that will appear on the ballot. Staff recommends moving the deadline to file the SEI to match the 5:00 p.m. deadline on the day that the declaration of candidacy and nomination papers is due. The counterpoint to this policy change is that the later deadline provides an "escape valve" where candidates no longer wishing to appear on the ballot could simply not file their SEI. The later deadline also allows the candidate additional time to gather the required financial information, though they have already had considerable time to gather nomination signatures. However, staff believes that a consistent deadline would improve administration and better inform the public of candidates who achieve ballot status.

## **Chapter 9**

31. § 9.01(2). This provision establishes the candidate notification requirements prior to conducting a recount. Current statutes require personal delivery of the petition to the candidate or an approved agent, by either the clerk or the sheriff. Providing notice of the recount petition could potentially be delayed if the candidate and/or their agent is traveling outside of the municipality, county, or state after the election. The Legislature could revise this provision by allowing a three-step process. The first step a clerk would take is to attempt personal delivery of the petition to the candidate or approved agent. The second step would be to obtain documented confirmation of acknowledgement by the candidate or agent (e.g., through email or a documented phone call). The clerk could then issue a public notice and proceed with the recount process, if those two options are unsuccessful within a reasonable time period.
32. §§ 9.01(1)(ar)3. and (b). These sections establish deadlines for convening the board of canvassers for conducting a recount but provide conflicting deadlines. The Legislature could revise this section by setting the deadline to provide clarity, consistency, and sufficient time for clerks to prepare for conducting a recount.

## **Chapter 10**

33. § 10.02(3)(b). This provision includes requirements for the information that must be contained in the Type B election notice. This language still refers to antiquated voting equipment technology and depressing levers. The Legislature could revise this provision to reflect modern voting equipment technologies.
34. § 10.04. This section relates to the publication of election notices and the fees charged for publication by newspapers. The Legislature could clarify this section by allowing publishing all types of elections notices as an insert, consistent with commercial rates for newspaper inserts.

## **TECHNICAL CHANGES**

### **Chapter 5**

35. § 5.02(24r). This provision defines the term “voting machine” and includes mechanical voting equipment like lever voting machines. Mechanical voting systems have been entirely replaced by more modern electronic voting systems and the Legislature could consider revising this definition to remove the references to the antiquated technology.
36. § 5.51(2). This provision provides the requirements for the weight of paper used for hand-counted ballots using an arcane formula that is regularly misapplied by election officials. The Legislature could consider revising this requirement to specify a clearly understandable paper weight for ballots or direct the commission to specify the required paper weight for ballots.
37. § 5.60(3). This provision provides for a separate ballot for city offices, but unlike subsections for other levels of government this subsection does not require write-in lines be provided. The Legislature could clarify that write-in lines must be provided for city ballots as well.

38. § 5.62(1)(a). This provision requires that independent candidates for state office appear on partisan primary ballots. This was previously necessary to determine the independent candidate's eligibility for public funding. As public funding for state candidates has been eliminated, this language should be removed.
39. § 5.72. This provision requires clerks to provide a ballot sample to Commission staff three weeks before any election for review. This conflicts with the 48-day deadline for ballots to be available for state and federal elections. The Legislature could address this by changing the deadline to "as soon as candidates are certified" instead. The Legislature could also consider making commission review of ballots voluntary, but still allow the commission to compel compliance with the prescribed ballot template, if necessary.

## Chapter 6

40. § 6.02. This provision outlines the general qualifications to vote. The Legislature could clarify that for voter registration, a person turns 18 on the anniversary of their date of birth. This addresses the common sense versus common law issue previously addressed by the G.A.B., deciding that a person turns 18 on the anniversary of their date of birth.
41. § 6.03(3). This provision addresses the right to vote by persons under guardianship or adjudicated incompetent. State law currently reserves rights to the individual unless specifically determined by a court to be incompetent to exercise those rights. However, this provision contains old language requiring individuals subject to guardianship to have an affirmative finding that they are competent to vote. The Legislature could revise this provision to reverse the standard to assume competency as required by state law and cross-reference as necessary with other state laws on guardianship. This change would make this provision consistent with other state laws regarding guardianship and legal competency.
42. § 6.25(4). The last clause of this provision states, "*and, if the elector is an overseas elector, the elector resides outside of the United States.*" The Legislature could eliminate the redundant second half of this clause as an overseas elector is already defined in § 6.24(1) as someone who does not qualify as a resident of this state.
43. § 6.34. This section covers proof of residence (POR) requirements for voter registration. Throughout this section, there are several references to POR as an *identifying document*. The Legislature could replace those references with *proof of residence* to clarify the section and avoid any confusion with the proof of identification requirement.
44. §§ 6.34(3)(a)1 and 2. These provisions refer to using either a Wisconsin driver license or state-issued identification card as proof of residence. The Legislature could revise these sections to include a receipt for either Wisconsin Department of Motor Vehicles (DMV) product, consistent with DMV current practices of issuing a temporary receipt prior to the driver license or state-issued identification card.

45. § 6.34(3)(a)7. This provision allows for using a university, college, or technical college identification card as proof of residence for voter registration, with either a fee payment receipt or a list of students residing in school housing. The Legislature could clarify that the receipt or list of students must include the name and address of the registrant.
46. § 6.45(1). This provision requires the municipal clerk to make copies of the poll list for use in the election. It should be updated to clarify that paper copies of a poll list need not be produced when an electronic poll list is used.
47. § 6.46(2). This provision requires a municipal clerk to remove the poll lists from the office for the purpose of copying if a copying machine is not accessible in response to public records requests or in order to supply candidates with the poll list. The provision should be updated to replace “if a copying machine is not accessible” with “if producing copies of the lists at the clerk’s office is not possible.”

## **Chapter 7**

48. § 7.08(10). This provision requires that the Commission provide to each municipal clerk, on a continuous basis, the names and addresses of organizations certified to provide services to victims of domestic abuse or sexual assault. As the addresses of these organizations may be sensitive information in that they provide temporary shelter to victims, this information cannot be placed on the Commission’s website. Additionally, sending this information unsolicited to over 1,800 municipal clerks could also compromise the security of victims. To better promote the security of victims of domestic abuse or sexual assault, the Legislature could consider modifying this provision to only provide this information to municipal clerks as needed to confirm the eligibility of confidential voters.
49. § 7.15(1)(j). This provision requires municipal clerks to send absentee ballots to electors who have filed a proper request. The provision appears to be redundant with subparagraph (cm) and could be removed or consolidated with (cm).
50. § 7.52(1)(b). This section provides a procedure by which a municipality may canvass absentee ballots on Election Day in a location other than the polling place and authorizes the municipality to appoint additional election inspectors to administer this absentee ballot canvass. However, when 2013 Act 147 expanded the residency of election officials to the county in which they serve, it did not similarly modify the residency requirement for election inspectors appointed to assist with this absentee ballot canvassing process. For consistency of administration, the Legislature could consider modifying § 7.52 to also permit the appointment of individuals who reside within the county of a municipality using this procedure.
51. § 7.53(2)(a). This provision states that in municipalities with multiple polling places, the municipal board of canvassers (MBOC) consists of the municipal clerk and two other qualified electors of the municipality. The word “other” implies that the municipal clerk is a qualified elector, which is not always true as many municipalities appoint their municipal clerk without regards to residency. Agency staff has interpreted 7.53(2)(a) to require that a municipal clerk must be a qualified elector of the municipality to serve on the MBOC, although the clerk should

always be present to advise the members of the MBOC and handle the administrative processes associated with the canvass. To affirm the agency's interpretation the Legislature could consider revising this language to clarify that the municipal clerk may only serve as a member of the MBOC if they are a qualified elector and specifying who fills this position on the MBOC if the clerk is not a qualified elector.

## **Chapter 9**

52. § 9.10(2)(e). This provision provides the reasons to not count recall petition signatures. In 2013 Wisconsin Act 160, the Legislature required that all petitions include the legibly printed name of the signer. While 2013 Act 160 required the printed name for nomination papers and petitions, it did not add the same requirement for recall petitions. The Legislature could correct this by adding to this section a reason not to count a recall petition signature if the printed name is not legible. The sections that cover the requirements for petitions are also inconsistent. Sections related to nomination papers and petitions affirm the requirements of what individuals must provide, whereas the section on recall petitions identifies when not to count signatures. Alternatively, the Legislature could revise this provision to state the information a recall petition must contain in order to count a signature, similar to the other sections.

## **Chapter 10**

53. § 10.06(2). This section enumerates the various election notices that county clerks are required to publish. While subparagraphs (f) and (L) require the publication of a Type A Notice of Referendum Election before the spring and general elections, there are no similar provisions for such a notice for referenda held in conjunction with the spring or partisan primaries. There is also no requirement in this section for the Type C Notice of Referendum before these elections, although it is addressed in the general description of the Type C notice at 10.01(2)(c). For consistency, the Legislature could revise 10.06(2) to include similar referendum notice requirements for state or county referenda held in conjunction with these elections as with any other election.
54. § 10.06(3). This section enumerates the various election notices that municipal clerks are required to publish. While subparagraph (as) requires the publication of a Type A Notice of Referendum Election before the spring primary if there is direct legislation to be voted on, there is no requirement for such a notice for other referenda held in conjunction with the spring primary. There is also no requirement for the Type C Notice of Referendum for non-direct legislation referenda voted on at the spring primary or for any referenda to be voted on at the partisan primary, except as part of the general definition of the notice in 10.01(2)(c). Finally, there is no Type D Notice of Polling Hours and Locations requirement in this section for either the spring or partisan primary although it is required as part of the general definition of the Type D notice at 10.01(2)(d). For consistency, the Legislature could revise this section to include similar notice requirements for all elections.

### **Chapters Not Administered by the Wisconsin Elections Commission**

55. Chapter 66 – Subchapter II. This subchapter generally describes the processes by which a municipality may incorporate or adjust municipal boundaries. Staff has been involved in several incorporations and boundary agreements where the provisions of this subchapter appear inconsistent with the rules applied to other petitions and referenda in Chapters 5-12. The Legislature could consider revisiting this subchapter to harmonize its provisions with the rules governing other forms of petitions and referenda.



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**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Administrator

Prepared and Presented by:  
Robert Williams, Elections Specialist

**SUBJECT:** Legislative Status Update

## **SIGNIFICANT FEDERAL LEGISLATION**

Each house of Congress is working on a version of the National Defense Authorization Act (NDAA). The House of Representatives passed its version of the bill, HR 2810, on July 14, 2017. The Senate version of the NDAA, S. 1519, has passed out of the Armed Services Committee. Senate consideration of the NDAA may occur shortly. Senators Amy Klobuchar of Minnesota and Lindsay Graham of South Carolina have proposed an amendment to the NDAA which includes significant election-related provisions including the following:

1. Provide grant funding for states to implement security recommendations after receiving a Department of Homeland Security Risk and Vulnerability assessment.
2. Require the Election Assistance Commission (EAC) to hold public hearings and work with cyber experts to establish best practice recommendations for both election cybersecurity and election audits and provide grant funding for states to implement those best practices.
3. Require the Department of Homeland Security (DHS) and the Director of National Intelligence (DNI) to establish strong lines of communication with state election officials regarding cyber threats and allow each state's senior election official to receive a security clearance in order to receive briefings on cyber threats.
4. Require the EAC to work with states to ensure that voter verified paper ballot auditing systems are in place.
5. Require DHS and DNI to provide annual reports to Congress on foreign threats to our election system.

## **NEW STATE LEGISLATION**

1. *Assembly Joint Resolution 47 and Senate Joint Resolution 53: A constitutional amendment to establish and ensure the rights of crime victims (first consideration).*

Sponsors: Bipartisan. This constitutional amendment provides for a 19-point list of rights for victims of crime in this state. The constitutional amendment also authorizes the victim to enforce his or her rights in court, and the attorney for the government in the case involving the victim may seek enforcement of the victim's rights upon request of the victim.

AJR 47 introduced in the Assembly on May 4, 2017. SJR 53 introduced in the Senate on May 17, 2017. AJR 47/SJR 53 public hearing held on June 15, 2017.

2. *Assembly Joint Resolution 68 and Senate Joint Resolution 65: To amend so as in effect to repeal section 13 of Article XIII of the Constitution, eliminating constitutional restrictions on marriage (first consideration).*

Sponsors: Minority. This constitutional amendment eliminates the constitutional restriction that only a marriage between one man and one woman shall be valid or recognized as a marriage in this state and the provision that a legal status identical or substantially similar to that of a marriage for unmarried individuals shall not be valid or recognized in this state.

AJR 68 introduced in the Assembly on June 30, 2017 and referred to the Committee on Constitution and Ethics. SJR 65 introduced in the Senate on June 23, 2017 and referred to the Committee on Financial Services, Constitution, and Federalism.

3. *Assembly Joint Resolution 71: A constitutional amendment reserving to the people the power of referendum to reject acts of the legislature and the power of initiative to propose and approve at an election laws and constitutional amendments (first consideration).*

Sponsors: Bipartisan. This constitutional amendment creates a petition process by which the people may propose and approve laws and constitutional amendments at an election and creates a referendum process by which the people may reject an act of the legislature.

AJR 71 introduced in the Assembly on September 7, 2017 and referred to Committee on Constitution and Ethics.

4. *Senate Joint Resolution 63: A constitutional amendment to Section 2 Article I of the constitution relating to slavery or involuntary servitude in punishment of a crime (first consideration).*

Sponsors: Minority. This proposed constitutional amendment eliminates the exception to the constitutional prohibition against slavery and involuntary servitude for the punishment of a crime for which the party has been duly convicted. Under the constitutional amendment, slavery and involuntary servitude are prohibited without exception.

SJR 63 was introduced in the Senate on June 23, 2017 and referred to the Committee on Financial Services, Constitution, and Federalism.

### **PREVIOUS STATE LEGISLATION – CHANGE IN STATUS**

5. *Assembly Bill 42 and Senate Bill 15: Various changes regarding administrative rules and rule-making procedures and making an appropriation.*

Sponsors: Majority. This bill 1) requires scope statements for proposed administrative rules to be reviewed by the Department of Administration for a determination of an agency's authority to promulgate a rule; 2) requires agencies to hold preliminary public hearings and comment periods on scope statements for rules if directed to do so by the Joint Committee for Review of Administrative Rules (JCRAR); 3) requires the passage of a bill in order for an agency to promulgate a rule that would result in implementation and compliance costs of \$10 million over any two-year period, subject to certain exceptions; and 4) allows either a co-chairperson of JCRAR or JCRAR as a whole, at certain steps in the rule-making process, to request the preparation of an independent economic impact analysis for a proposed rule.

SB 15 passed by Assembly on June 14, 2017 and passed by Senate on June 15, 2017. Signed into law by the Governor on August 9, 2017 as 2017 Wisconsin Act 57.

6. *Assembly Bill 64 and Senate Bill 30: State finances and appropriations constituting the executive budget act of the 2017 legislature.*

Sponsors: Majority. This bill is the "executive budget bill" under section 16.47 (1) of the statutes. It contains the governor's recommendations for appropriations for the 2017-2019 fiscal biennium. The bill contains the WEC's budget for the 2017 – 2019 biennium, including authorization of staff positions and the conversion of 21 federally funded positions to GPR positions upon the depletion of remaining HAVA funds. Also, as part of the transportation portion of the budget, language was added to the budget bill regarding the sharing of information between the Department of Transportation and the Wisconsin Elections Commission. Department of Transportation would be authorized to share information obtained from applications for titles, driver's license, and state identification cards, including Social Security numbers. Sharing of this information would be authorized to allow the Wisconsin Elections Commission to maintain compliance with its ERIC obligations, and resolves issues regarding the use of confidential DOT data for ERIC processes.

AB 64 passed by Assembly on September 13, 2017 and passed by the Senate on September 15, 2017. Awaiting Governor's signature and possible vetoes.

7. *Assembly Bill 153 and Senate Bill 102: Aggrieved parties petitioning for a recount and making an appropriation.*

Sponsors: Majority. This bill provides that any candidate voted for at any election who is an aggrieved party or any elector who voted on any referendum question at any election may petition for a recount. The bill also provides that the actual cost of performing a recount includes the actual

cost incurred by the Elections Commission to provide services for performing the recount and allows the commission to recover that cost.

AB 153 passed by the Assembly on June 21, 2017. SB 102 public hearing held on April 5, 2017.

8. *Assembly Bill 268 and Senate Bill 195: School board referendums to exceed revenue limit applicable to a school district.*

Sponsors: Majority. This bill limits to five consecutive school years the number of years for which a school board may seek approval from voters in the school district to increase the revenue limit applicable to the district.

AB 268 and SB 195 public hearing held June 15, 2017.

9. *Assembly Bill 269 and Senate Bill 194: Scheduling of school district referendums to exceed revenue limits.*

Sponsors: Majority. With exceptions, this bill permits a school board to schedule a referendum for the purpose of increasing the school district's revenue limit only concurrent with a spring election or with the general election and only if the election falls no sooner than 70 days after the date on which the board adopts and files a resolution to that effect. With exceptions, this bill also permits a school board to submit to the electors of a school district a resolution seeking approval to borrow money through a bond issue only concurrent with a spring election or with the general election and only if the election falls no sooner than 70 after the board adopts the resolution to issue a bond.

AB 269 public hearing held June 15, 2017. SB 194 referred to Senate Committee on Elections and Utilities on April 20, 2017.

10. *Assembly Bill 317 and Senate Bill 322: Review by state agencies of administrative rules and enactments; an expedited process for repealing rules an agency no longer has the authority to promulgate; retrospective economic impact analyses for rules; and reporting by the Legislative Reference Bureau on rules in need of revision.*

Sponsors: Majority. This bill provides for an alternate, expedited procedure an agency can use to repeal a rule that the agency determines it no longer has the authority to promulgate because of the repeal or amendment of the law that previously authorized its promulgation (unauthorized rule).

AB 317 passed by Assembly June 14, 2017. AB 317 and SB 322 public hearing held in Senate August 29, 2017

**PREVIOUS STATE LEGISLATION – NO CHANGE IN STATUS**

11. *Assembly Bill 33: Requiring a municipal judge to be a licensed Wisconsin attorney.*

Sponsors: Minority. Beginning on January 1, 2018, this bill requires a person seeking to be elected or appointed as a municipal judge to be an attorney licensed to practice in this state and a member in good standing of the State Bar of Wisconsin.

AB 33 referred to Assembly Committee on Judiciary on January 20, 2017.

12. *Assembly Bill 44 and Senate Bill 13: Legislative and congressional redistricting.*

Sponsors: Minority. This bill creates a new procedure for the preparation of legislative and congressional redistricting plans. The bill directs the Legislative Reference Bureau (LRB) to draw redistricting plans based upon standards specified in the bill and establishes a Redistricting Advisory Commission to perform certain tasks in the redistricting process. The bill also makes various other changes to the laws governing redistricting.

AB 44 fiscal estimate received by the Assembly on April 3, 2017. SB 13 fiscal estimate received by the Senate on March 1, 2017.

13. *Assembly Bill 85 and Senate Bill 66: Allowing a local public official to serve as an election inspector.*

Sponsors: Minority. This bill provides that an individual holding a local public office may be appointed to serve as an election official without having to vacate the local public office. Current law prohibits an individual from serving as an election official at an election for which the individual is a candidate. The bill does not change that prohibition.

AB 85 public hearing held on April 18, 2017. Assembly Committee on Campaigns and Elections recommended passage of AB 85 on May 19, 2017. SB 66 referred to Senate Committee on Elections and Utilities on February 21, 2017.

14. *Assembly Bill 129: Removing the requirement that a classified service employee take a leave of absence to run for office.*

Sponsors: Minority. This bill removes the requirement that a person employed in the classified service who runs for a partisan political office take a leave of absence during the campaign period for that office. The bill maintains the requirement under current law that the person separate from the classified service if elected.

AB 129 referred to Assembly Committee on Campaigns and Elections on March 7, 2017.

15. *Assembly Bill 148 and Senate Bill 100: Expiration of statements of scope for administrative rules.*

Sponsors: Majority. This bill provides for the expiration of a statement of scope 30 months after the date on which the statement is published in the Wisconsin Administrative Register.

AB 148 and SB 100 referred to Joint Committee for Review of Administrative Rules on May 9, 2017 with a public hearing held on May 16, 2017.

16. *Assembly Bill 223: Prohibiting offers of employment in exchange for not seeking an elective state or local office and providing a criminal penalty.*

Sponsors: Minority. This bill prohibits a state or local public official or candidate to offer employment to another individual in order to induce the individual not to seek election to the same office held by the official or sought by the candidate.

AB 223 referred to Assembly Committee on Campaigns and Elections on April 10, 2017.

17. *Assembly Bill 257 and Senate Bill 166: Requiring candidates for president or vice president to file tax returns with the Elections Commission.*

Sponsors: Minority. This bill requires each candidate for president or vice president to submit with his or her declaration of candidacy copies of the candidate's federal tax returns for the three most recent years for which the candidate filed such returns.

AB 257 referred to Assembly Committee on Campaigns and Elections on April 20, 2017. SB 166 referred to Senate Committee on Elections and Utilities on April 13, 2017.

18. *Assembly Bill 322 and Senate Bill 229: Authorization for electors to vote in the primary of more than one political party.*

Sponsors: Minority. This bill permits a voter in a partisan primary to “split tickets,” designating the candidate of his or her choice for each office, including the offices of Governor and Lieutenant Governor, regardless of party affiliation. The bill also allows a voter to vote for independent candidates for one or more state offices in a partisan primary, in addition to party candidates for one or more state or county offices. Under the bill, a voter may still vote for only one candidate for each office. The voting procedure at the general and other partisan elections is unaffected by the bill.

AB 322 referred to Assembly Committee on Campaigns and Elections on May 16, 2017. SB 229 referred to Senate Committee on Elections and Utilities on May 4, 2017.

19. *Assembly Bill 330 and Senate Bill 278: Rule making authority of certain agencies.*

Sponsors: Majority. This bill prohibits a commission or board, including a credentialing board, that has not taken any action with respect to the promulgation of a rule in ten years or more from taking any such action in the future unless a subsequent law specifically authorizes it to do so.

AB 330 referred to Assembly Committee on State Affairs on May 16, 2017. SB 278 referred to Senate Committee on Government Operations, Technology, and Consumer Protection on June 2, 2017.

20. *Assembly Bill 332 and Senate Bill 260: Signature requirement for nomination of candidates to school board in school districts that contain territory lying within a second-class city.*

Sponsors: Majority. This bill permits the annual meeting of a common or union high school district or the school board of a school district to adopt a resolution to reduce the number of signatures required on nomination papers submitted by candidates for school district officer. This bill permits the number of signatures that must be obtained to be reduced by resolution to not less than 20 and not more than 100 if the school district territory lying within the second-class city or cities is less than or equal to 10 percent of the school district's territory.

AB 332 referred to Assembly Committee on Campaigns and Elections on May 19, 2017. SB 260 referred to Senate Committee on Elections and Utilities on May 17, 2017.

21. *Assembly Bill 361: Requiring a local referendum to impose a wheel tax.*

This bill provides that a county or municipal vehicle registration fee, commonly known as a wheel tax, may be imposed only if approved by a majority of electors voting in a referendum at a regularly scheduled election.

AB 361 referred to Assembly Committee on Ways and Means on June 1, 2017.

22. *Assembly Bill 375: Review and modification of voter registration lists.*

This bill eliminates the Elections Commission's responsibility to change the registration status of electors who have not voted within the previous four years from eligible to ineligible under certain circumstances.

AB 375 referred to Assembly Committee on Campaigns and Elections on June 6, 2017.

23. *Assembly Joint Resolution 2 and Senate Joint Resolution 3: Deleting from the state constitution the Office of State Treasurer.*

Sponsors: Majority. This constitutional amendment, to be given second consideration by the 2017 legislature for submittal to the voters in April 2018, was first considered by the 2015 legislature in 2015 Assembly Joint Resolution 5, which became 2015 Enrolled Joint Resolution 7. If enrolled on second consideration, the proposed constitutional amendment would be scheduled for a statewide referendum at the 2018 Spring Election.

AJR 2 was tabled on March 9, 2017. SJR 3 was passed by the Senate on March 7, 2017 and by the Assembly on March 9, 2017. As a result, the proposed constitutional amendment will appear on the ballot as a statewide referendum at the 2018 Spring Election.

24. *Assembly Joint Resolution 7 and Senate Joint Resolution 10: An advisory referendum on legalization of medical marijuana.*

Sponsors: Minority. This joint resolution calls for an advisory referendum on the question of whether Wisconsin should allow for the uses of and safe access to marijuana for medical purposes by individuals with debilitating medical conditions with a written recommendation from a licensed Wisconsin physician. The referendum is to be held at the next general election occurring not sooner than 45 days after adoption of the resolution.

AJR 7 referred to Assembly Committee on Health on February 20, 2017. SJR 10 referred to Committee on Senate Organization on February 15, 2017.

25. *Assembly Joint Resolution 11: To amend section 12 of article VIII of the constitution relating to funding in bills placing requirements on local governmental units (first consideration).*

Sponsors: Majority. This constitutional amendment, proposed to the 2017 legislature on first consideration, prohibits the legislature from passing any bill that places a requirement on a local governmental unit unless the bill contains an appropriation that reimburses the local governmental unit for the full cost of complying with the requirement. The amendment does not prohibit the governor from vetoing an appropriation contained in a bill that creates such a requirement. A proposed constitutional amendment requires adoption by two successive legislatures, and ratification by the people, before it can become effective.

Referred to Assembly Committee on Constitution and Ethics on February 27, 2017.

26. *Assembly Joint Resolution 35 and Senate Joint Resolution 24: Wisconsin legislative resolution to restore free and fair elections in the United States and to apply to Congress for a limited national convention for the exclusive purpose of proposing an amendment to the U.S. Constitution that would restore balance and integrity to our elections.*

Sponsors: Minority. A petition to the U.S. Congress to call a Constitutional Convention to restore balance and integrity to elections by proposing an amendment to the U.S. Constitution that would permanently protect elections in the United States of America by addressing issues raised by the decision of the U.S. Supreme Court in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), and in related cases and events.

AJR 35 referred to Assembly Committee on Constitution and Ethics on April 24, 2017. SJR 24 referred to Senate Committee on Elections and Utilities on March 29, 2017.

27. *Assembly Joint Resolution 53 and Senate Joint Resolution 54: An advisory referendum on an amendment to the U.S. Constitution.*

Sponsors: Minority. This resolution places a question on the November 2018 ballot to ask the people if Congress should propose an amendment to overturn *Citizens United v. F.E.C.*

AJR 53 referred to Assembly Committee on Constitution and Ethics on May 22, 2017. SJR 54 referred to Senate Committee on Financial Services, Constitution, and Federalism on June 2, 2017.



# WISCONSIN ELECTIONS COMMISSION

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ADMINISTRATOR MICHAEL HAAS

## MEMORANDUM

**DATE:** For the September 26, 2017 Commission Meeting

**TO:** Members, Wisconsin Elections Commission

**FROM:** Michael Haas  
Interim Administrator

Prepared by Elections Commission Staff

**SUBJECT:** Commission Staff Update

Since the last Elections Commission Update (June 20, 2017), staff of the Commission have focused on the following tasks:

### 1. General Activities of Election Administration Staff

With the Spring Election in the rearview mirror, Election Administration staff has been working on other agency projects, including the post-election voting equipment audit, voting equipment testing campaign, electronic poll book research and addressing cyber security planning.

### 2. Badger Voters

The following statistics summarize voter data requests as of September 18, 2017.

Fiscal Year	Total Number of Requests	Requested Files Purchased	Percentage of Requests Purchased	Total Revenue
<b>FY2018 to date</b>	52	25	48%	\$21,190.00
<b>FY2017</b>	643	368	57%	\$234,537.35
<b>FY2016</b>	789	435	55%	\$235,820.00
<b>FY2015</b>	679	418	61.56%	\$242,801.25
<b>FY2014</b>	371	249	67.12%	\$125,921.25
<b>FY2013</b>	356	259	72.75%	\$254,840.00
<b>FY2012</b>	428	354	78.04%	\$127,835.00

### **3. WEDCS**

Board staff continues to monitor municipal and county clerk compliance with EDR reporting requirements following the 2017 Spring Primary and Spring Election.

Pursuant to Statutes, the EL-190NF Election Administration and Voting Statistics Report for the 2017 Spring Primary was due to be entered into the Wisconsin Elections Data Collections System by March 23, 2017. The EL-190NF Election Statistics report was posted to the Elections Commission website on May 24, 2017. As of September 13, 2017, three municipalities do not have a report entered in to WEDCS for the Spring Primary.

Pursuant to Statutes, the EL-190NF Election Administration and Voting Statistics Report for 2017 Spring Election was due to be entered into the Wisconsin Elections Data Collections System by May 4, 2017 for the Spring Election. The EL-190NF Election Statistics report was posted to the Elections Commission website on August 7, 2017. As of September 13, 2017, eight municipalities do not have a report entered in to WEDCS for the Spring Election.

The EL-191 Spring Election Cost Report was due to be entered in to the WEDCS by June 5, 2017. The EL-191 Election Cost Report was posted to the Elections Commission website on July 10, 2017. As of September 13, 2017, 32 municipalities have not entered a cost report in WEDCS.

The Election Day Registration (EDR) Postcard Statistics initial report for the 2017 Spring Primary was posted to the Elections Commission website on May 26, 2017, prior to the statutory deadline of May 29, 2017. As of September 13, 2017, nine municipalities have not yet submitted a complete EDR Postcard Statistics Report. By statute this report is to be updated monthly until there is a full accounting of all EDR postcards for the Spring Primary. Staff continues to follow up with clerks to obtain the outstanding reports.

The Election Day Registration (EDR) Postcard Statistics initial report for the 2017 Spring Election was posted to the Elections Commission website by the statutory deadline of July 10, 2017. As of September 13, 2017, six municipalities have not yet submitted a complete EDR Postcard Statistics Report for the 2017 Spring Election. By statute this report is to be updated monthly until there is a full accounting of all EDR postcards for the Spring Primary. Staff continues to follow up with clerks to obtain the outstanding reports.

### **4. Education/Training/Outreach/Technical Assistance**

The election administration team has developed a multi-faceted training plan for the 2017-2018 election cycle. The plan includes a new election administration training webinar series, scheduled to begin in October with a *New Clerks Orientation* webinar. Other webinars will focus on appointing election officials for the 2018-2019 term, school district clerk duties, a review of absentee voting rules and tutorials on counting votes, and spoiling and remaking ballots.

Commission staff surveyed county clerks and the leadership of the Wisconsin Municipal Clerks Association for recommendations for the WEC's Certified Clerk-Trainer program to conduct Baseline Chief Inspector training classes locally. Clerks recommended for the program were invited

to participate in a one-day training class with Commission staff in the WEC offices in Madison on October 12, 2017.

Due to the number of new municipal clerks each year, Commission staff are offering the state-mandated Municipal Clerk Core (MCT Core) Training class as a pre-recorded online presentation. Each of the sixteen segments of the presentation were recorded in a video format and include a self-evaluation for clerks to gauge their comprehension of a particular topic or subject matter. The MCT Core presentation is available in the WisVote Learning Center, so that training can be tracked and clerks can receive certification once they have completed the curriculum.

Commission staff has updated several subject-driven user manuals and guides, including the recall and caucus manuals, and is in the process of completing updates on the counting votes guide, the nomination paper review guide and a number of voter guides.

In June, Commission staff attended the Wisconsin County Clerks Association 112<sup>th</sup> Annual Symposium in Bayfield. At the request of the county clerks, staff conducted three educational breakout sessions to review important elections dates and deadlines, clerk duties and provide an update on the WisVote team's goals for the WEC Canvass Reporting System. A short presentation the following day updated the clerks on the progress of the Commission's budget, plans for election systems security and the status of the electronic poll book.

## **5. WisVote**

WisVote staff remains on track to complete scheduled 2017 WisVote projects to prepare agency systems for the 2018 election cycle. Staff continues to meet, plan, and test development on WisVote, MyVote, WEDCS, Canvass Reporting, and other high priority IT projects.

In addition to enhancements to WisVote related systems, WisVote staff continues to make improvements to the functionality of the WisVote system. Some of the more notable improvements include:

- Several improvements were made to the election tracking and management features of WisVote, specifically related to reporting units, polling places, and local contests.
- A security update was made to MyVote to help prevent unauthorized online voter registrations.
- A new process was developed in WisVote to allow candidates to be imported from the Campaign Finance system.
- A new web service was created from WisVote to allow the Ethics Commission to get updates on candidates and elected officials that could impact campaign finance audits.
- Ongoing system and server patches as well as routine system bug fixes were implemented.

Staff also assisted clerks with the management and setup of local special elections in the WisVote system. There have been seven local special elections since the last Staff Update, with twelve more scheduled before the end of the year. Additional special elections may yet be scheduled and will be supported by WisVote staff.

**6. 2017 Voter Record Maintenance completion and statistics**

In June, the Commission mailed notices to 381,495 registered voters who had not voted in any election after December 31, 2012. To remain active in the statewide voter registration system, the voters had one month to contact their municipal clerk and request continuation of their registration. Voters who either did not respond to the postcard or whose postcard was returned to the municipal clerk as undeliverable had their status changed to inactive in WisVote.

On August 1, 2017, as required by Wis. Stat. §6.50(2r), the Commission published the 2017 voter record maintenance statistics on the agency website.

Below is a summary of the 2017 statistics:

<b>Voter Maintenance Summary Statistics</b>		<b>Total</b>
Total number of notices mailed		381,495
Number of notices that were returned requesting continuation of registration		28,169
Number of notices that were returned as undeliverable		153,416
Number of voters mailed a notice who requested cancellation of registration		250
Number of voters mailed a notice who clerks determined to be deceased		799
Number of voters mailed a notice who clerks deactivated for reasons other than being deceased or at the voter's request		7,692
Number of duplicate voter records identified and merged together		532
Number of voters who did not respond to the notice		189,702
Total number of voters mailed a notice whose status changed from eligible to ineligible		351,733

The first statewide four-year voter record maintenance was conducted in 2009. Prior to 2009, municipalities performed list maintenance. Approximately 92% of voters mailed a notice had their registration status changed from eligible to ineligible as a result of the 2017 process, which was consistent with previous cycles, and slightly lower than the rate in three of the last four years in which the maintenance process was completed. The chart below is a summary of available statistics for each of the five years that the state has performed the four-year voter record maintenance.

2016 Four-Year Voter Maintenance Summary Statistics	2017	2015	2013	2011	2009
Total number of notices mailed	381,495	97,981	299,748	240,505	313,205
Number of notices that were returned requesting continuation of registration	28,169	10,084	16,652	14,636	14,856
Number of notices that were returned as undeliverable	153,416	25,735	105,667	52,418	181,936
Number of voters mailed a notice who requested cancellation of registration	250	29	7	NA	NA
Number of voters mailed a notice who clerks determined to be deceased	799	493	278	NA	NA
Number of voters mailed a notice who clerks deactivated for reasons other than being deceased or at the voter's request	7,692	NA	NA	NA	NA
Number of duplicate voter records identified and merged together	532	NA	560	NA	NA
Number of voters who did not respond to the notice	189,702	62,162	177,420	173,451	116,413
Total number of voters mailed a notice whose status changed from eligible to ineligible	351,733	81,310	283,087	225,869	298,349

## 7. Voter Felon Audit

The Voter Felon Audit is a State required post-election comparison of voters who cast a ballot at an election with the list of persons who were under Department of Corrections (DOC) supervision for a felony conviction at the time the vote was cast. The Voter Felon Audit has a review process of several stages. To summarize the review process, the matches are first reviewed by the Department of Corrections, then by the municipal clerk and finally by Wisconsin Elections Commission staff before referring to county district attorneys for their own investigation. The process provides the Commission the ability to identify any potential voter/felon matches and it also allows the Commission to identify any discrepancies with the matches. It is the final check in identifying potential felon participation in an election, should such activity not be caught through other statutory required processes, such as the felon list check by election officials at the polls.

Updates for the most recent Voter Felon Audits conducted by the Commission are as follows:

The Voter Felon Audit for the November 8, 2016 General Election began on January 26, 2017. As previously reported to the Commission, the initial comparison identified 93 potential matches. After subsequently running the matching process two more times the final comparison identified 111 potential matches. Of the 111 matches, 32 potential matches have been closed because DOC staff or WEC staff determined the individual identified was not a felon at the time of the election, or the voter and the felon identified in the match was not the same person. After DOC, clerks and WEC staff

completed their review, the remaining 79 matches were referred to county district attorney offices between July 14, 2017 and July 19, 2017.

The Voter Felon Audit for the February 21, 2017 Spring Primary Election began on July 25, 2017. The comparison identified 0 potential matches.

The Voter Felon Audit for the April 4, 2017 Spring Election began on July 25, 2017. The comparison identified 4 potential matches. The 4 matches underwent review by DOC, clerks and WEC staff and were referred to the county district attorney offices on August 18, 2017.

Staff is also providing its bi-yearly comprehensive update on the status of the past Voter Felon Audits and District Attorney response information. Attachment A contains statistics regarding the number of initial matches between records of voters and records of felons, as well as the disposition of the cases referred to district attorneys that the Commission has been made aware of. Additional details regarding specific cases are included in the Commission's supplemental materials folder.

## **8. ERIC List Maintenance Processes**

WEC staff has begun working on the ERIC list maintenance project approved by the Commission at the March 14, 2017 meeting and scheduled for the fall of 2017. WEC staff requested lists from ERIC to identify voters who may have moved within Wisconsin and voters who may have moved out of state. WEC received the first lists of movers from ERIC on September 13, 2017. Staff is beginning to work on the notices to be mailed to these voters.

## **9. Electronic Poll Books**

Staff received approval during the June 20<sup>th</sup> Commission meeting to build an Electronic Poll Book in house. Staff mapped out Election Day processes to be completed within the E-Poll Book software and are currently in the process of paper prototyping these processes for usability purposes. Staff is meeting regularly and gathering feedback from municipal clerks and election inspectors using paper prototypes. Staff plans to gather feedback from local election officials and election inspectors on a larger scale during feedback sessions scheduled for late September through mid-October.

The first E-Poll Book survey was available to clerks from August 23, 2017 to September 4, 2017 and solicited responses from local election officials about preferred E-Poll Book features and interest in utilizing the system after deployment. Responses indicate cost as the largest factor in determining whether a municipality will implement E-Poll Books. Clerk responses also indicate the benefit of importing Election Day data into WisVote, scanning licenses to pre-fill data, and reduced wait times as the most enticing benefits while comfort level of election inspectors with technology remains a concern.

Overall comments from the survey show a trend in the mistaken belief that E-Poll Books will be a mandatory implementation and that they will be connected to the internet. Staff decided to develop an E-Poll Book that will not connect to the internet at this time. Additionally, E-Poll Books are an option for all municipalities and a requirement for none. In addition, survey respondents indicated significant interest in a WEC-coordinated purchase of the hardware that will be used to run the E-Poll

Book software. WEC staff continues to review state procurement regulations and restrictions to determine the feasibility of a bulk hardware purchase on behalf on interested municipalities.

As development of the Commission’s in-house electronic poll book continues, legal questions about the acceptance of an electronic signature in lieu of a traditional wet signature have arisen. Whether an electronic signature can be solicited and accepted occurs in two situations at the polls: 1) the requirement that an elector sign the poll book prior to receiving a ballot, and 2) the requirement that an individual registering to vote completes and signs a voter registration form (EL-131) and signs a supplemental poll list. It is anticipated that these scenarios could be accommodated by using an electronic poll book which allows an individual to meet the signature requirements by applying an electronic signature, by signing a tablet screen, signature pad or similar technology, which is then accepted and stored by electi10. on officials.

**10. Elections HelpDesk /Customer Service Center**

The Elections HelpDesk staff is supporting over 2,000 active WisVote users, the public, and election officials. The HelpDesk is maintaining the accessibility tablets utilized in polling place surveys along with various training and testing computer systems. Staff is monitoring state enterprise network and data center changes and status, assisting with processing data requests, and processing voter verification postcards. Help Desk staff has been serving on and assisting various project teams including the MyVote 2.0, ongoing WisVote development, ERIC and E-PollBook teams. Staff continues to maintain and update Elections, WisVote clerk contact and Listserve email lists. Staff is processing lists of voters that registered in other states and notifying clerks of the registration cancelation. Staff is coordinating and assisting with upgrade projects such as the Office 2016, Win 10, Office 365, VoIP and the STAR projects initiated by the Department of Administration (DOA) Data Center, and administering Elections Commissions Exchange email system.

Help Desk staff are onboarding new clerk users with credentials for the WisVote system and the WisVote Learning Center as they request access, and also assisting clerks with configuring and installing WisVote on municipal computers. The Help Desk continued to field a wide variety of calls and emails from voters and the public, candidates, political committees, and public officials.

	<u>Elections Help Desk Call Volume</u> (608-261-2028)	<u>Front Desk Call</u> <u>Volume</u> (608-266-8005)
June, 2017	778	268
July, 2017	864	450
August, 2017	512	209
<b>Total Calls for Reporting Period</b>	<b>2,154</b>	<b>927</b>

**9. Communications Report**

Between June 1 and August 31, 2017, the Public Information Officer (PIO) has engaged in the following communications activities in furtherance of the Commission’s mission:

Media: The PIO logged 145 media and general public phone calls and 222 media email contacts. There was strong media interest in Wisconsin’s voter registration list and cyber security. The PIO

appeared on Wisconsin Public Television's "Here and Now" public affairs program July 7 to discuss the Presidential Advisory Commission on Election Integrity's request for Wisconsin's voter file. He was also a guest on the "Public Policy with Mary Glass" radio talk show on WXRW-FM in Milwaukee on July 7. The PIO prepared six news releases regarding Four-Year Voter Record Maintenance and the voter file request, and other subjects.

Online: The PIO managed regular updates to the agency website and worked with the agency's webhosting company on security updates and plans to upgrade the agency website. In addition, the PIO has been planning for software upgrades to the main agency website and the Bring It to the Ballot microsite, which will be completed before the end of the year.

Public Records: Working with legal counsel, the PIO has responded to and closed all the Commission's public records requests received between June 1 and August 31, 2017.

Records Management: The PIO worked with Public Records Board staff to prepare three new Records Retention/Disposition Authorization forms (RDA), which were approved at the PRB's meeting on August 28, 2017. These new RDAs will permit staff to dispose of old paper clerk survey forms stored in the office basement, and to archive other types of documents at the State Records Center. Staff is in the midst of a project to review and either dispose of or archive all paper records stored in the basement, after which staff will tackle paper records on the Third Floor.

## **11. Financial Services Activity**

- Fiscal 2018 has been set-up in STAR HCM; STAR Finance and STAR Project Costing modules. Budget Journal entries have been processed for FY2018, including additional chart string coding which will allow us to more effectively track revenues and expenditures.
- Remaining \$201,230.25 WEDCS grant expenditure request from 2010 was received in July. As directed by the U.S. EAC, funds were deposited into to HAVA account.
- The FVAP grant has been fully depleted. We have processed and received the last two FVAP draws:
  - \$113,353.46 received 8/8/2017
  - \$201,211.36 received 8/17/2017 as final draw
- Staff is closing out fiscal 2017 accounting. As of September 18th, 19 of 21 appropriation accounts have been verified and closed. We are working with the State Controller's Office to close remaining appropriations.
- Recently staff discovered transactions erroneously posted to GAB in FY2017. Journals were processed to correct and we are in the process of verifying/closing the 24 appropriations in GAB FY2017.
- Staff is working closely with the State Controller's Office (SCO) to move and correct GAB transactions and balances from FY2016 and prior years. Financial staff from Elections and

Ethics will be meeting with the Controller's office to correct all prior balances, the meeting is slated for after SCOs fiscal closing/financial statement generation activities for the state.

- ES&S was invoiced \$9,044.27 covering period 4/13 – 6/30 for testing and certification of EVS 5.2.2.0 and EVS 5.3.2.0. We will be processing a second bill for the period following 6/30.
- Staff, in conjunction with STAR Project Costing team, has completed a STAR enhancement which will allocate leave time to appropriate projects and grants, proportionate to staff payable time incurred on projects and grants. This application will significantly reduce manual processing and reconciliations of time reporting.
- Utilizing the new allocation methodology, staff has processed the payroll leave re-allocation for FY2017 to properly allocate salaries, fringe benefits and leave expenses between federal and state programs.

## **12. Procurements**

- Staff successfully rolled forward encumbrances from FY2017 Purchase Orders to FY2018.
- All unused FY2017 encumbrances have been liquidated from the appropriation balance in FY2017.

The following Purchase Orders have been processed since the June 2017 Commission meeting:

- \$530,400 in Purchase Orders were written for IT Contractor Services for three full time IT contractors in FY2018.
- \$99,883.50 in a Purchase Order was written for additional licenses to access WisVote.
- \$4,480 in a Purchase Order was written for temporary staff as receptionist.

All referenced purchases were made utilizing mandatory state contracts and in accordance with state procurement policies.

## **13. Staffing**

Agency management continues to work to fulfill staff vacancies. WisVote Trainer Juanita Borton left the WEC on June 26, 2017 to accept a position with the State of Minnesota as a Program Manager. On August 20, 2017, Patrick Brennan transferred to the vacant WisVote Trainer position. Patrick had started with the WEC in July 2016 as a WisVote Specialist.

On July 9, 2017, Jodi Kitts returned to the WEC as a WisVote Specialist. Jodi had worked SVRS/WisVote Specialist at the agency from January 2014 until February of 2017, and since that time had worked as an Equal Opportunity Specialist for the Department of Administration. During

Jodi's previous term at the G.A.B. and WEC she made valuable contributions to the development of WisVote, the training of clerks, and the management of the voter felon audit and ERIC launch.

Effective August 7, 2017, Richard Rydecki was promoted to the position of Elections Supervisor and is now supervising the Elections Administration team. Richard has been with the agency since 2011 and has lead our accessibility initiatives as well as our voting equipment testing and auditing programs, among other responsibilities.

Sarah Statz and Thomas Innes joined the WEC staff as WisVote Specialists in August and September, respectively. Sarah had worked in the Sauk County Clerk's office and Tom had worked in various capacities for the Village of McFarland, including with the Clerk's office. Both Sarah and Tom have experience in elections administration and working in the WisVote system, and bring valuable perspectives of local election officials.

Elections Specialist Jennifer Webb also left the agency September 15, 2017 to accept a position as a Program and Policy Analyst at the Department of Administration. Jennifer had worked at the agency since November 2014 and was an integral part of creating WisVote training materials and voting equipment programs, in addition to many other election administration tasks. Office Operations Associates Jennifer Johnson and Marni Martinson also resigned effective August 4, 2017.

The WEC is also losing one of our excellent developers on the agency's IT team, Mahadeo Matre, who has accepted a position with Promega Corp. Mahadeo has been an important part of many major IT projects including the complete modernization of the voter registration system resulting in the launch of WisVote as well as the creation of the original MyVote Wisconsin website and its updated version which was launched in 2016. His last day with the WEC will be September 29.

Agency management is currently conducting recruitments to fill two Office Operations Associate positions, one WisVote Trainer position, five Election Administration Specialists, and one Legal Associate position, with the goal of filling all remaining vacancies this fall.

Finally, Commissioner Steve King submitted his resignation from the Wisconsin Elections Commission on August 21, 2017 due to his appointment to serve as the U.S. Ambassador to the Czech Republic. Commissioner King's appointment has passed the stage of Senate Committee hearings and recommendation, and is awaiting confirmation by the full Senate. WEC staff appreciate Commissioner King's service in helping the agency establish a solid foundation and strong start and wish him well in his new endeavor.

#### **14. Meetings and Presentations**

On June 21, 2017, Administrator Haas testified before the U.S. Senate Intelligence Committee on behalf of the National Association of State Election Directors. Committee members were interested in lessons that states learned regarding election security during the 2016 election cycle and changes that states would be contemplating for future elections. The written testimony submitted by Administrator Haas is available at this link: <http://elections.wi.gov/>. In conjunction with the Senate Committee hearing, Administrator Haas and Public Information Officer Reid Magney fielded a variety of media requests from state and national media outlets.

Agency staff has participated in additional meetings with other state and federal agencies and organizations related to election security and contingency planning and preparations, including the National Association of State Election Directors, the U.S. Department of Homeland Security, Wisconsin Division of Enterprise Technology and the Department of Military Affairs. Federal, state and local officials have reached an agreement regarding the makeup of the Coordinating Council which was established pursuant to the designation of election systems as critical infrastructure by the Department of Homeland Security. On June 28, 2017, Administrator Haas and Administrator Meagan Wolfe also received a tour of the state's new emergency operations command center.

On June 22, 2017, Administrator Haas spoke to a group of municipal clerks in Stevens Point at a League of Wisconsin Municipalities conference regarding several topics, including election security and electronic poll books.

On June 23, 2017, representatives of Clear Ballot, a voting equipment vendor, provided staff with a demonstration regarding its voting system which is currently undergoing testing and certification by the U.S. Election Assistance Commission, and which it intends to submit for approval in Wisconsin.

On July 21, 2017, staff received a demonstration of an electronic poll book system used in Iowa developed by Cerro Gordo County. Two representatives from Cerro Gordo County traveled from Iowa to show how the system works and answer questions from WEC staff.

Administrator Haas appeared on a taped interview on the Capitol City Sunday program on July 23, 2017. The interview pertained to the request of the Presidential Advisory Commission on Election Integrity for Wisconsin voter registration data and the agency's response to the request.

From July 25 – 27, 2017, agency staff hosted a representative of ESRI, a software company from which we recently purchased GIS mapping software. The representative worked with GIS Specialist Greg Grube and other agency staff to help set up the mapping software with Wisconsin voter and district data, and demonstrated ways in which the software can be used. The software will allow the WEC to combine voter and election district data in new ways, and to present it in new formats that will help agency staff, clerks, and voters.

On July 26, 2017, agency staff met with Chris Ott, the new Executive Director of the ACLU of Wisconsin, to provide background regarding the Commission, voter outreach efforts, and Wisconsin voter registration and voting laws.

On August 9, 2017, several staff members met with Karen McKim to discuss observations regarding the 2016 voting equipment audit as well as observations of the presidential recount and the canvass process.

On August 22 – 25, 2017, Administrator Haas attended the summer meeting of the National Association of State Election Directors (NASSED) along with related meetings, in Garden Grove, California. Administrator Haas attended the Executive Board meetings for both NASSED and the Electronic Registration Information Center (ERIC). He acted as moderator for one of the NASSED

meeting sessions featuring election bloggers and academics, and also presented a legislative update at a separate session in his role as legislative liaison for NASED.

Assistant Administrator Meagan Wolfe attended a conference of the Election Center as well as a meeting of the Voting Information Project, also in Garden Grove, California, from August 19 – 23, 2017. She also attended the ERIC Executive Board meeting as well as a portion of the NASED summer meeting.

On August 30, 2017, agency staff hosted several contributors of Ballotpedia, a website that follows election news nationwide and is based in Middleton. WEC staff provided an overview of the Elections Commission and current projects, and also invited Ballotpedia representatives to attend Commission meetings.

On August 28, 2017, WisVote IT Lead Sarah Whitt attended a “Tech Talk” round-table organized by the National Association of Secretaries of State regarding cyber security. The following day, she attended a workshop hosted by the National Institutes of Standards and Technology for members of its Interoperability working group to model election business processes.

## **15. Delegated Authority**

Administrator Haas took the following actions pursuant to the Commission’s delegation of authority:

- A. Approved the purchase of additional WisVote licenses for municipal and county clerk offices to accommodate WisVote users throughout the state. An additional 510 licenses were purchased at a total cost of \$99,883.50. Combined with previous purchases, agency staff expects that sufficient licenses are now available to local election officials to prepare for and conduct elections for the foreseeable future and to ensure compliance with Microsoft’s licensing requirements.
- B. Authorized payment of an annual fee in the amount of \$10,000 to Smarty Streets for its address validation service which is incorporated into the WisVote system.
- C. Based upon an RFP process, approved entering into contracts to update the agency’s main website and the Bring It to the Ballot website by migrating data from Drupal 6 software to Drupal 8. Staff Counsel is drafting contract language with Cruiskeen Consulting Inc. of Menomonie, Wisconsin to update the agency’s main website at a cost of \$7,950, and with Herkimer Media of Madison, Wisconsin to update the Bring It website at a cost of \$4,180.

## **16. Voting Equipment Testing and Certification Program**

As part of the approval process for ES&S voting system EVS 5.2.2.0 and 5.3.2.0, staff worked with the vendor to revise the crossover vote warning screens on the DS200 optical scan tabulator and the instructions that appear on the ExpressVote universal voting device for a Partisan Primary. The crossover vote warning screen on the DS200 has been updated to provide information to the voter that they have voted in more than one party’s primary and that no votes for partisan office will count

if they cast their ballot as currently marked. Instructions have been added to several screens on the ExpressVote that are similar to the instructions provided on Partisan Primary paper ballots. The header on each contest screen will now include a party designation so that a voter will know which party's primary they are currently viewing.

A protocol for testing and evaluating the ExpressLink was developed and applied to this component of the voting system. Ten different ballot styles were programmed for a General Election and the ExpressLink was tested to ensure that the activation barcodes that printed on the ballot card activated the correct ballot style. Staff voted 10 ballots of each ballot style on the ExpressVote and tabulated those ballots using the DS200. The results tape was then reviewed to make sure the DS200 accurately tabulated votes for each different ballot style. The results of the test campaign formed the foundation of the staff recommendation to certify the ExpressVote component for use in Wisconsin.



ELECTION	Number of voters matched with felons per Election	Number of matches referred to district attorneys	Number of referrals closed by DA without charges	Number of referrals resulting in a conviction	Number of remaining referrals with current charges filed status	Number of matches or cases referred remaining open or under investigation	Number of matches closed	All matches have reached final disposition	Total number of voters	Referrals as a percentage of total number of voters
4/4/2017 Spring Election	4	4	0	0	0	4	0		747,671	0.000535%
2/21/17 Spring Primary	0	0	0	0	0	0	0	yes	375,216	0%
11/8/2016 General Election	111	79	5	2	1	71	39		3,004,051	0.002630%
8/9/2016 Partisan Primary	4	2	1	0	0	1	3		645,619	0.000310%
4/5/2016 Spring Election and Presidential Pref.	33	24	4	1	2	17	16		2,130,221	0.001127%
2/16/2016 Spring Primary	7	3	1	0	0	2	5		578,083	0.000519%
9/29/15 Special Election Assembly 99	0	0	0	0	0	0	0	yes	1,591	0%
9/1/2015 Special Primary Assembly 99	0	0	0	0	0	0	0	yes	3,422	0%
7/21/15 Special Election State Senate 33	0	0	0	0	0	0	0	yes	10,012	0%
6/23/15 Special Primary State Senate 33	0	0	0	0	0	0	0	yes	11,449	0%
4/7/2015 Spring Election	9	6	1	0	0	5	4		858,683	0.000699%
2/17/15 Spring Primary Election	6	3	0	0	0	3	3		32,119	0.009340%
11/4/2014 General Election	229	43	12	11	0	20	209		2,420,811	0.001776%
8/12/2014 Partisan Primary	10	1	0	1	0	0	10	yes	638,677	0.000157%
4/1/2014 Spring Election	8	5	2	2	0	1	7		506,566	0.000987%
2/18/2014 Spring Primary	0	0	0	0	0	0	0	yes	4,310	0.000000%
4/2/2013 Spring Election	8	3	2	1	0	0	8	yes	889,008	0.000337%
2/19/2013 Spring Primary	1	0	0	0	0	0	1	yes	374,631	0.000000%
11/6/2012 Presidential and General Election	89	33	15	8	1	9	80		3,085,450	0.001070%
8/14/2012 Partisan Primary	3	2	1	0	0	1	2		851,572	0.000235%
6/5/2012 Recall Election	53	22	9	4	1	8	45		2,516,371	0.000874%
5/8/2012 Recall Primary Election	13	3	1	2	0	0	13	yes	1,360,750	0.000220%
4/3/2012 Presidential Preference Spring Election	13	7	5	1	0	1	12		1,144,351	0.000612%
2/21/2012 Spring Primary	3	2	1	0	0	0	3	yes	139,343	0.001435%
4/5/2011 Spring Election	16	7	3	1	0	3	13		1,524,528	0.000459%
2/15/2011 Spring Primary	5	2	2	0	0	0	5	yes	444,766	0.000450%
11/2/2010 General Election	60	21	9	5	0	7	53		2,185,017	0.000961%
9/14/2010 Partisan Primary	8	3	2	0	0	1	7		930,511	0.000322%
4/6/2010 Spring Election	6	2	1	1	0	0	6	yes	574,130	0.000348%
2/16/2010 Spring Primary	1	0	0	0	0	0	1	yes	152,532	0%
<b>Total for all 26 elections</b>	<b>700</b>	<b>277</b>	<b>77</b>	<b>40</b>	<b>5</b>	<b>154</b>	<b>545</b>	<b>12</b>		