

**Testimony of Michael Haas
Interim Administrator
Wisconsin Elections Commission**

**Assembly Committee on Campaigns and Elections
April 18, 2017**

**Room 300 Northeast, State Capitol
Public Hearing**

Assembly Bill 153

Chairperson Bernier and Committee Members:

Thank you for the opportunity to provide testimony on Assembly Bill 153. As you know, this bill would make several changes to the rules related to recount petitions. The Wisconsin Elections Commission has not taken a position on this bill and I am testifying for information purposes only in my capacity as the Commission's Interim Administrator.

A significant change proposed in the bill redefines candidates who qualify as an aggrieved party who may request a recount, so that candidates who are not within close striking distance of the initial winner would be prohibited from requesting a recount. This is a policy decision for the Legislature, and I would like to focus on implementation and administrative considerations related to other provisions of the bill.

I would first note that the initial canvass of official election results, as well as any recounts, are conducted by the municipal board of canvassers for any municipal office, and by county boards of canvassers for any county, state, or federal office. The Elections Commission oversees the recount and certifies the recount results for any county, state or federal office.

One general point to keep in mind is that the recount provisions of Wis. Stat. § 9.01 currently emphasize uniformity in the process, regardless of whether the recount relates to a local, county, state or federal office. Changes in the process may have a significantly different impact on candidates and local election officials depending on the office being recounted.

Recount Filing Deadline

For example, the original bill would change the deadline for a candidate to request a recount petition from 5 p.m. on the third day following completion of the canvass board certification to 5 p.m. on the day after canvass board certification. County canvass

boards may complete their initial canvass anywhere from the Monday after an election to 14 days after the election. Candidates for county, state or federal office would still have at least a week and in some cases two weeks after an election to consider whether to petition for a recount, although most of that time only the unofficial results would be available to consider in their decision-making.

On the other hand, under the original bill's proposed deadline, candidates for local office may need to decide by 5 p.m. on the day after the election whether or not to request a recount. This would be the case if a municipality had only one polling place and no outstanding provisional ballots on Election Night. Under those circumstances the election inspectors at the polling place meet as the municipal board of canvassers after the votes are tabulated to certify the official results.

We have heard concerns from some local clerks about accelerating the recount petition deadline for municipal candidates to potentially require a decision and petition to be filed the day after an election. In such close contests, the candidate may benefit from additional time to consider their options and to review and assemble the documents necessary to make a decision and to file a petition.

The Committee may wish to consider whether such a short recount deadline for local offices, which are much more frequent than recounts for other offices, might force the hands of candidates who may not otherwise file a petition if they had additional time to complete further research and weigh their options. In addition, municipal clerks are often busy with other post-election duties on the day after the election which may complicate the filing and processing of a recount petition so soon after the election.

The three-day time limit for a recount petition became a concern during the 2016 recount of the Presidential Election in Wisconsin. Pursuant to the statutory deadline, the recount petition was not filed until November 25th, the Friday after Thanksgiving and 17 days after the election. The WEC issued the recount order on Nov. 29th and it began on Dec. 1st. This created a tight timeframe to complete the recount due to questions regarding the deadline for the State to resolve any election disputes in order to ensure that the State's electoral votes were honored.

While a recount of a contest at a Spring Primary may risk delaying the printing of ballots for the Spring Election, a recount of a Presidential Election creates a unique issue due to the Electoral College process. In weighing these considerations, alternatives which may be considered are 1) retaining the current deadline for a recount petition as three days after the canvass boards have certified official results, 2) changing the deadline for all recounts as proposed in the bill or as a two-day deadline, or 3) establishing different deadlines for different contests.

We understand that an amendment has been introduced to the Senate companion bill which would change the recount filing deadline only for Presidential elections. This would have the benefit of causing the least amount of change for clerks compared to current practice, while also addressing the specific issue which gave rise to the bill. Other options we identified would be to establish the shorter filing deadline any statewide recount, or only to any state or federal contests which are certified by the Elections Commission rather than county or local boards of canvass.

Recount Start Deadline

While the bill would shorten the deadline for a recount petition to be filed, it allows an extra day for county canvassing boards to prepare for a recount after the Elections Commission issues a recount order, which is done in the event of a recount for a state or federal office. The bill requires the recount to begin no later than the third day after the order is issued rather than the second day after the order is issued as under current law.

This would help counties to assemble election materials and organize the recount before the start date. Currently some canvass boards convene simply to meet the deadline for starting the recount and immediately adjourn for a day or two so that the county clerk can assemble the records and workers necessary to conduct the recount.

I would note that there is a potential conflict in the statutes regarding the starting date for recounts which I understand is also being addressed through the amendment to the Senate bill. The bill amends Section 9.01(1)(ar)3. to add another day before canvass boards are required to convene. However, the very next subsection of the Statutes, Section 9.01(1)(b), states that the canvass board must convene no later than 9 a.m. on the day following the deadline for filing the recount petition.

Because the deadline for reconvening is measured in two different ways in these paragraphs, there may be a conflict in establishing the deadline to reconvene. The Senate amendment reconciles these provisions by clarifying that the deadline for reconvening in state or federal recounts runs from the Commission recount order, and that the deadline runs from the petition filing deadline in all other recounts. This change would remove the need for the Commission to craft individual solutions to the conflicting language on case-by-case basis whenever the State issues a recount order.

Recount Fee

Finally, the bill proposes two changes related to the administration of the fee for a recount involving a state or federal office, when a fee is required because the margin is greater than 0.25% of the total votes for the office. In such cases the Elections Commission is required to provide an estimate of the recount costs to the recount petitioner and to collect the fee prior to the start of the recount.

The bill would change current law which specifically provides that the recount fee may include only costs of local election officials, by requiring the Commission to include its costs in the calculation of the recount fee. During the 2016 Presidential recount, the Commission's program staff tracked its time working on the recount, which included providing guidance to county clerks, canvass boards and candidates; administering a system of collecting daily results from the counties; documenting and resolving conflicts between the original canvass and the recount results; responding to inquiries from the media and public; responding to litigation along with the Department of Justice; and certifying the final recount results.

The total staff time that was tracked was 727 hours and the total documented staff costs were \$23,350. However, those totals do not include the time of agency management (the Elections Supervisor and Administrator) or our staff attorney working on the recount. We did not track that time but if we had I would estimate that the total cost would approach doubling the tracked costs. Of course there were some unique circumstances surrounding this recount, including the issues related to the Electoral College, the intense national media interest, and the amount of litigation involved.

In addition to the Presidential recount, the November 2016 General Election resulted in recounts for the offices of Iron County District Attorney and the 32nd Senate District. While our office issued the recount order and provided assistance to the canvass boards in those cases, our involvement and staff time was much more limited than in the Presidential recount. Except in cases of a statewide recount, the staff costs of the Elections Commission are not likely to be substantial.

The bill also extends the deadline for either collecting the remainder of a recount fee from a candidate if the initial estimate was too low, or for refunding the balance of the fee if the estimate proved to be too high. The bill would change the deadline in either case from 30 days to 45 days from the certification of the recount results.

This change would help the administration of the recount fee for both our office and local clerks in the case of a recount for a state or federal office. During the Presidential recount, we found that it was a challenge for some county and municipal clerks to tally all of their costs so that we could issue reimbursement checks in time to calculate the refund owed to the petitioning candidate within 30 days of the recount certification.

In some cases counties later advised us that they incurred costs that were not included with their initial reimbursement request but we had already issued the recount fee refund. Permitting an additional 15 days will ensure that local officials and our office can be confident that all costs are accounted for before issuing a refund or requesting an additional payment from the candidate.

Thank you for the opportunity to share our thoughts with you. I hope this testimony will help inform the Legislature's consideration of this bill. As always, we would be glad to answer questions and work with you to address any questions or issues related to the bill.

Respectfully submitted,

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

Michael Haas
Interim Administrator
Wisconsin Elections Commission
608-266-8005
Michael.haas@wi.gov