

Testimony of Meagan Wolfe
Interim Administrator
Wisconsin Elections Commission

Joint Committee on Finance
December 3, 2018

Room 412 East, State Capitol
Public Hearing

Assembly Bill 1070

Co-Chairpersons Darling and Nygren and Committee Members:

Thank you for the opportunity to provide testimony on behalf of the Wisconsin Elections Commission (WEC) regarding Assembly Bill 1070. The Elections Commission has not taken a position on these bills, and therefore I am providing our staff's feedback for information purposes only.

AB 1070 would make a number of changes related to specific administrative rules as well as the rulemaking process and guidance provided by agencies. I would like to comment briefly on both the specific administrative rules related to elections administration that would be affected, as well as provisions which would impact formal and informal guidance issued by the Elections Commissions.

Specific to election administration, the bill would codify certain administrative rules related to the Photo ID Law such as an existing rule that includes photo ID cards of technical college students as an acceptable form of photo ID along with other student ID cards. Technical college ID's were not specifically addressed in the original photo ID legislation.

The bill also codifies the administrative rules of the Department of Transportation which permit individuals who do not have all required documents to obtain a photo ID from the Division of Motor Vehicles under the ID Petition Process. That process permits individuals to obtain a temporary document that can be used for voting purposes while the DMV attempts to locate and verify documentation sufficient to issue a regular photo ID card. The rules related to the ID Petition Process have been in place since the fall of 2016.

AB 1070 would also establish new requirements regarding agency guidance. The broad definition of an agency "guidance document" in Section 31 of the bill includes numerous informational documents and training resources produced by the WEC. Examples of

such documents include the agency's 250-page Election Administration Manual and 190-page Election Day Manual, as well as many other manuals, presentation materials and guidance documents for local clerks and election inspectors. The WEC also produces many different resources for the public related to voter registration and voting procedures.

Under the bill, an agency shall identify the applicable provision of federal law or state law that supports any statement or interpretation of law that the agency makes in any publication, form, pamphlet, or other informational material regarding the laws the agency administers.

The bill also requires each agency to submit each proposed guidance document to the Legislative Reference Bureau for publication in the administrative register and to provide a period for the public to submit written comments to the agency on the proposed guidance document. The agency must retain all written comments submitted during the public comment period and consider those comments in determining whether to adopt the guidance document as originally proposed, modify the proposed guidance document, or take any other action. The bill allows for a comment period of less than 21 days with the approval of the governor. The bill also requires the agency to permit continuing public comment on the guidance document.

The bill provides that a guidance document does not have the force of law and does not provide the authority for implementing or enforcing a standard, requirement, or threshold. The bill provides that, as of six months after the bill's effective date, any guidance document that does not comply with the requirements in the bill is considered to be rescinded.

WEC staff has identified several significant concerns regarding the implementation of these new procedures related to agency guidance and informational materials. First, the sheer volume of materials that would need to be reviewed and edited to include citations to specific statutes would be a challenge. Second, such an effort may be counterproductive because training and informational materials are most effective when they are presented in plain language and not cluttered by statutory citations.

The Commission has a statutory duty to publish election manuals "written so as to be easily understood by the general public..." Wis. Stat. §7.08(3). Inserting statutory and caselaw citations related to each statement of interpretation conflicts with that mandate. The Commission also creates and publishes many webinars, instructional videos and voter brochures and resources that would need to be recreated to include statutory citations. In the opinion of Commission staff, this would not only require substantial effort which would interfere with other agency priorities, but would also result in inferior products that are less understandable and more likely to result in confusion among election officials and voters.

Third, the public comment period is likely to create timeliness issues because the WEC must often produce guidance in a short period of time based upon legislation, court decisions, or developments in the election cycle or political circumstances. Presumably legislation would have already been subject to a public hearing, and implementation of court directives typically is not subject to public comment.

In 2014, the agency was required to quickly create guidance for voters related to the Photo ID Law, first in response to a court decision affirming the law and, a short time later, in response to a court order staying that decision. The court decisions were issued shortly before the General Election, and it would have been impossible to comply with the proposed public comment period and effectively administer the election.

Fourth, it is not clear whether the daily emails sent by WEC staff in response to inquiries from clerks and the public would constitute “formal communication” and therefore be included in the definition of “guidance document.” Staff responds to such inquiries on a constant and prompt basis. During the first two weeks of November 2015, for instance, WEC staff responded to over 6,600 email inquiries. WEC staff attempts to provide concise and understandable answers based on their expertise and experience applying the law. Often these responses relate to and apply several statutory provisions.

It would be helpful to clarify whether staff responses to individual inquiries are considered “guidance documents” under the bill. If so, the ability of staff to provide timely and effective customer service would be virtually eliminated. It is not practical to submit routine staff email communications to the Legislative Reference Bureau for public comment, require a certification from the Administrator, and delay any responses until the expiration of any public comment period. WEC staff requests clarification that such communications do not constitute “guidance documents” under the bill, or some consideration for the unique circumstances and mission of the Elections Commission.

I hope that this information is helpful for the Committee’s consideration, and I would be glad to answer any questions.

Respectfully submitted,

Meagan Wolfe
Interim Administrator
Wisconsin Elections Commission
608-266-8005 / meagan.wolfe@wi.gov