

State of Wisconsin



2021 Senate Resolution 11

ENGROSSED RESOLUTION

Relating to: castigating the Wisconsin Elections Commission for ignoring statutory requirements, for sidestepping the administrative rulemaking process, and for not following both the letter and intent of state statute.

Whereas, the Legislature passed 2015 Wisconsin Act 118, which established the Wisconsin Election Commission (WEC) to administer elections in the State of Wisconsin; and under state statute, the commission “has the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns”; and

Whereas, the Wisconsin Elections Commission, under Wis. Stat. § 5.05 (1) (f), may “Promulgate 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 laws regulating campaign financing, or ensuring their proper administration”; and

Whereas, the Joint Legislative Audit Committee directed the nonpartisan Legislative Audit Bureau to conduct an audit of the 2020 election ensuring compliance with state and federal election laws; and

Whereas, the Legislative Audit Bureau released its findings and determined that the Wisconsin Elections Commission did not comply with state statute, administrative rules, and best practices, while performing actions that would have required the rulemaking process, including all of the following:

- In regards to verifying municipal clerk training—“WEC’s staff did not comply with administrative rules because they did not contact governing bodies if clerks did not report having completed the required training for the two–year period that ended in December 2019”;
- In regards to election official trainings—“WEC did not comply with statutes by promulgating administrative rules prescribing the contents of training for special voting deputies or election inspectors”;
- In regards to DOT data sharing agreements—“WEC did not comply with statutes by obtaining from DOT the signatures of individuals who register online to vote”;
- In regards to the use of municipal absentee drop boxes—“If WEC believes that municipal clerks should be permitted to establish drop boxes, WEC’s staff should work with WEC to promulgate administrative rules to permit clerks to establish them”;
- In regards to keeping accurate data on Wisconsin’s voter rolls—“WEC did not regularly obtain all types of data from ERIC”;
- In regards to adjournment while counting ballots—“Written guidance that WEC’s staff provided to municipal clerks in October 2020 did not comply with statutes;
- In regards to special voting deputies in nursing homes—“Written guidance that WEC provided to municipal clerks in June 2020 did not comply with statutes”;
- In regards to relocation of polling places—“Written guidance that WEC provided to municipal clerks in March 2020 did not comply with statutes”; and

Whereas, WEC also served as a conduit for connecting Wisconsin clerks with the Center for Tech and Civic Life which poured more than \$6 million into local election efforts, which bought access to the nonpartisan election administration process such as those uncovered in Green Bay that provided outside actors access to key information and administrative functions, drove out the sitting city clerk, implemented partisan/political campaign turnout strategies, and contributed to the undermined trust and faith in Wisconsin's elections; and

Whereas, WEC is entrusted to administer Wisconsin's elections laws and when necessary utilize the emergency rulemaking process to respond to unique and pressing circumstances, not ignore statutory requirements or emergency rulemaking in exchange for expediency or personal policy preference; and

Whereas, Article IV, Section 1, of the Wisconsin Constitution prescribes that "The legislative power shall be vested in a senate and assembly," while state statute prescribes the role of the Wisconsin Elections Commission as "the administration of laws relating to elections and election campaigns"; now, therefore, be it

Resolved by the senate, That the Wisconsin Senate hereby castigates the Wisconsin Elections Commission for ignoring statutory requirements, for sidestepping the administrative rulemaking process, and for not following both the letter and intent of state statute, actions that represent a move not to administer but to unilaterally rewrite state law; and, be it further

Resolved, That the Wisconsin Senate directs WEC to comply with the recommendations issued by the Legislative Audit Bureau, as well as the requirements promulgated in state statute; and the Wisconsin Senate acknowledges that should the need arise, WEC shall promulgate emergency rules or petition the Legislature for a statutory change in extraordinary situations, rather than ignore these requirements.

State Capitol
Madison, Wisconsin

Senator Chris Kapenga
President of the Senate

Date

Michael J. Queensland
Senate Chief Clerk