

STATE SENATOR KATHY BERNIER
TWENTY-THIRD SENATE DISTRICT



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From: Senator Kathy Bernier
To: The Senate Committee on Elections, Ethics and Rural Issues
Re: Testimony on Senate Bill 795

Relating to: investigations by the Elections Commission based on information from the Electronic Registration Information Center and from municipal clerks indicating that Wisconsin registered voters may have voted more than once in the same election, and complaints filed with the Elections Commission alleging election law violations.

Date: February 12, 2020

Members of the committee, thank you for hearing my testimony on Senate Bill 795 today. Wisconsin is a member of the national Electronic Registration Information Center (ERIC) and receives regular updates from ERIC to help keep statewide voter rolls as clean and up to date as possible. One of the datasets available from ERIC after each general election shows voters who may have voted in more than one state. Wisconsin has access to this information but the Wisconsin Election Commission is not currently required to obtain it.

To ensure that the Election Commission has the most up to date information when it comes to possible voter fraud, this bill would require the Commission to obtain this multi-state voter report after each general election and review the indicated voters to see whether they have voted in more than one state. If the report is correct and the indicated voter voted in more than one state including Wisconsin, the Commission is required to report their findings to the District Attorney of the county where the voting occurred. The Commission would also be required to inform the Legislature of their actions in response to the ERIC report on an annual basis.

Currently, after each election a municipal clerk (or election commission) is required to perform an audit to assure that no person has been allowed to vote more than once. If a municipal clerk or election commission has good reason to believe that a person has voted more than once in an election, the municipal clerk is required to send that person a letter regarding the matter and send a copy of the letter and related information to the local district attorney.

Currently, the Commission and its staff cannot initiate a complaint based on the information they receive from ERIC (or any other reliable information they receive). This bill would allow the Commission and its employees to initiate a sworn complaint the way any other citizen could, ensuring that any voting irregularities that the Commission becomes aware of can be fully and promptly investigated.

These changes allow the Commission to take full advantage of the information they have access to as members of ERIC and will help reduce the amount of voting irregularities and fraud that occur during Wisconsin elections. I am happy to answer any questions you might have.



JANEL BRANDTJEN

STATE REPRESENTATIVE • 22ND ASSEMBLY DISTRICT

Testimony on SB 795

Thank you Chairperson Bernier and Honorable Committee Members of Elections, Ethics and Rural Issues for holding this hearing regarding SB 795. This bill is designed to promote voter integrity by addressing double voting in Wisconsin. Right now, the Wisconsin Elections Committee (WEC) receives a report from the Electronic Registration Information Center (ERIC) as required by law. The bill requires the Elections Commission to check for double voting (people who vote in Wisconsin and another state) using the data this is already available in the report. The also bill requires the Commission to refer any violations to the proper DA, or in some cases, even the Attorney General.

The bill requires municipal clerks to perform an audit for double voting and to report such violations to the DA and the Elections Commission. In its annual report to the Legislature, the Commission is required to include the number of referrals to DA's, a general description of the referral, and the outcome.

Finally, the bill allows Commission members to file sworn complaints of election law violations.

Thank you,

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

Representative Brandtjen

Testimony of Meagan Wolfe
Administrator
Wisconsin Elections Commission

Senate Committee on Elections, Ethics and Rural Issues
February 12, 2020

201 Southeast, State Capitol
Public Hearing

Chairperson Bernier and Honorable Members of the Committee:

Thank you for the opportunity to provide written testimony on behalf of the Wisconsin Elections Commission (WEC) regarding Senate Bill 795. Members of the Commission have not discussed this bill or taken a position on it, so our testimony is for information only.

When Wisconsin joined ERIC (the Electronic Registration Information Center), the organization focused on providing two types of lists to member states. One list includes individuals who appear to be eligible to vote but are not registered voters. The other list includes individuals who had provided an address to another governmental agency which was different than their voting residence. After receiving each list, the member state is required to initiate contact with the individuals on the list to encourage them to register to vote or to update their registration.

After assessing its experience with matching data from various sources, ERIC recently initiated an optional process intended to help detect whether individuals had voted in more than one state during a general election. Member states may, but are not required to, participate in the program which matches voter participation data from November general elections. Participating states must affirm that they will complete a reasonable internal investigation of any possible improper votes before publicly releasing information about the data.

The ERIC agreement also requires states to affirm that they can protect the confidentiality of the individual-level data, either by state law or administrative rule, until the internal investigation is complete and the findings are turned over to law enforcement. Wis. Stat. §§ 5.05(5s) and 12.13(5) satisfy this requirement and provide criminal penalties for Commission members or staff who disclose investigative records prior to any referral to law enforcement.

SB 795 requires the Elections Commission to participate in this optional ERIC initiative. The bill authorizes the Commission to determine the criteria used to conclude whether an elector has likely voted more than once in the same election. The bill requires the Commission, upon making such a finding, to refer the matter to the appropriate district attorney within 180 days after receiving the data from ERIC.

This process is similar to the Commission's current procedures for evaluating complaints alleging criminal violations of election laws under Chapter 12 of the Statutes, including election threats, election bribery and election fraud. The Commission evaluates evidence based upon criteria it has adopted and determines whether there is probable cause to conclude that a violation has occurred or is occurring. After making such a determination, the Commission may refer the matter to the appropriate district attorney. The Commission has authority to investigate such complaints, but only a district attorney and, in some cases, the Attorney General, has the authority to prosecute criminal violations.

The 180-day timeline to make a determination may sound like a reasonable requirement but we cannot determine at this time whether it is realistic due to several variables beyond our control. It will take some time for ERIC to produce the data because it must wait for all states to enter voter participation data and transmit it to ERIC, so it is good that the deadline runs from the time we receive the data. But the time required to complete all of the investigations will depend on the number of potential cases included in the ERIC report, the quality of the evidence and the timeliness of other states in cooperating with investigations.

Such investigations can require significant staff time to communicate with local clerks as well as state or county officials in other states. They can also compete with other agency priorities driven by the election calendar and legislative changes. The time required may also vary from one election to the next and it may decrease based upon experience with the process. Until we gain experience with this ERIC initiative, I can only say that the agency would strive to comply with the 180-day timeline but we do not control all the variables that will affect whether every investigation can be completed in that timeframe.

Separately, the bill requires the Commission to review all reports that local clerks send to district attorneys indicating that a voter may have voted twice in one election. Information regarding such cases is often detected when clerks enter voter participation information into the statewide voter registration database. Within 180 days of receiving information from local clerks, the Commission would be required to determine whether it is likely that an elector voted more than one once in the same election. Some of the same considerations apply regarding the timeline, although in these cases the Commission would need to communicate only with local election officials.

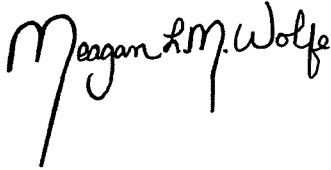
A more significant consideration is that the Commission would be required to evaluate cases which the local district attorney has already been made aware of. A referral from the Commission may lend some weight to the information provided by the clerk to the district attorney. But a referral from the Commission may also come after the district attorney has already evaluated the matter and determined whether to prosecute the case, and those ultimate charging decisions are the sole jurisdiction of the district attorney. The bill also requires the Commission to verify the district attorney's receipt of each letter from the municipal clerk which some district attorneys may view as redundant.

The bill requires the Commission to include information in its annual report to the Legislature regarding cases from both the ERIC data and local clerks, including the number of referrals made and a general description of each referral and the outcome of the referral. This would supplement similar data the Commission already provides in its annual report to the Legislature for cases that local clerks refer to the district attorney, pursuant to Wis. Stat. § 7.15(1)(g).

Finally, Section 3 of the bill specifies that the City of Milwaukee Election Commission must perform the same post-election audit as municipal clerks complete to detect electors that vote more than once in the same election. The Milwaukee Election Commission is already required to carry out all election duties of municipal clerks under Wis. Stat. § 7.21(1).

Thank you for the opportunity to provide testimony. If I can provide any additional information or clarification, please feel free to contact me.

Respectfully submitted,

A handwritten signature in black ink that reads "Meagan M. Wolfe". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

Meagan Wolfe
Interim Administrator
Wisconsin Elections Commission
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