



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

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Joint Committee on Finance

Paper #275

Elections Security and the Sale of Voter Data (Elections Commission)

[LFB 2021-23 Budget Summary: Page 163, #4 and Page 164, #5]

CURRENT LAW

The Elections Commission is required to make the state's voter registration list available for sale and to charge an amount necessary to cover list maintenance costs. The price is currently \$25 plus \$5 per 1,000 voter records, with a minimum charge of \$30 and a maximum charge of \$12,500. Records may include each voter's registration number, name, phone number, email address, street address, assigned districts, and an indication of whether the voter participated in recent elections. Revenue from the sale of voter lists is deposited to a federal aid appropriation for the election administration fund; however, the agency does not currently have the authority under state law to spend such revenues.

The Elections Commission is provided 6.0 federal project positions responsible for managing information technology (IT) projects, training local officials, and providing technical security assistance. The positions include an IT project manager, a security trainer, a data specialist, a local elections official assistant, a local elections office technical support specialist, and a voting equipment specialist. The project positions are currently funded by a federal elections security grant and are scheduled to sunset in June, 2022. The positions were removed by the Committee in executive session on May 6, 2021, as part of 2021-23 biennium standard budget adjustments.

DISCUSSION POINTS

1. Under 2011 Act 32 (the 2011-13 budget act), the state's election administration fund was modified to include revenue from sales of the state's voter registration list. Prior to Act 32, such revenues were deposited to the agency's materials and services PR appropriation. This modification

was in response to the federal Help America Vote Act, which required that revenues associated with the sale of voter registration lists be deposited to each state's election administration fund and used as a match for federal grant funds. The federal requirement was lifted in 2019, once the associated grant was closed. However, revenues from the sale of voter data have continued to be deposited in the election administration fund as directed under state law. The Commission does not have the authority to spend voter data sales revenue due to the language of the federal aid appropriation.

2. As of April 1, 2021, the revenue balance from the sale of voter data is \$1.9 million. The table below shows the number of files purchased and the net revenue for 2011-12 through 2020-21 (as of April 20, 2021). The current balance reflects an accumulation of revenues over several years as well as significant revenue from the 2020 election cycle. The agency has requested that these funds be used to support 3.0 PR positions, as described below.

Voter Data Requests and Revenue, 2011-12 to 2020-21

<u>Fiscal Year</u>	<u>Requested Files Purchased</u>	<u>Total Revenue</u>
2011-12	354	\$127,800
2012-13	259	254,800
2013-14	249	125,900
2014-15	418	242,800
2015-16	435	235,800
2016-17	368	234,500
2017-18	517	182,300
2018-19	473	328,000
2019-20	647	653,000
2020-21*	1,010	1,052,800

*As of April 20, 2021.

3. In its 2021-23 agency budget request, the Elections Commission requested the creation of an elections security and maintenance continuing PR appropriation to receive revenues from the sale of voter data. The appropriation would have estimated supplies and services funding of \$131,000 PR annually to support voter list processing, server and data storage costs, and IT developer expenses to maintain and secure the voter registration system. The agency requested that previously-collected revenues from voter data sales be transferred to the new appropriation.

4. Costs related to elections security vary by year, with greater demands and higher expenditures during presidential election years. Similarly, revenues from the sale of voter data vary by year, with higher revenues during election years. If the appropriation is structured as continuing, the agency would be authorized to spend amounts necessary for elections security and maintenance, subject to revenues collected. Given the variability in program activities, the creation of a continuing appropriation could create stability and facilitate a quick response to security and maintenance issues.

5. In 2017, the U.S. Department of Homeland Security designated election infrastructure,

including voter registration databases and elections management systems, as national critical infrastructure. The designation facilitates collaboration between federal, state, and local officials to prevent and respond to security incidents. In March, 2018, the Elections Commission received a federal elections security grant to support security improvements to its systems, equipment, and processes. The funds are allocated in accordance with a plan submitted to the U.S. Election Assistance Commission for activities such as subgrants to local units of government, security training for clerks, and upgrades to IT infrastructure. As of April 1, 2021, the remaining balance of the federal elections security grant is approximately \$7.4 million.

6. In June, 2018, the Commission was authorized six federal project positions to support the elections security grant initiatives through June 1, 2022. The project positions were removed as part of the 2021-23 biennium standard budget adjustments in executive session on May 6, 2021. In its 2021-23 agency budget request, the Commission requested that the 6.0 FED project positions be converted to 3.0 FED and 3.0 PR permanent positions, effective June 1, 2022. The agency requested \$18,500 FED and \$18,200 PR in 2021-22 and \$221,900 FED and \$218,500 PR in 2022-23 for salaries and fringe benefits. The permanent positions would have the same responsibilities as the current project positions (managing IT projects, training local officials, and providing technical security assistance). The six positions represent 19% of the agency's 31.75 authorized positions.

7. The voting equipment specialist, local elections official technical support, and security trainer positions would continue to be federally funded by the elections security grant. These three positions are generally responsible for safeguarding data, training clerks, fulfilling public data requests, and managing grant programs, responsibilities that could not be absorbed by other staff. The voting equipment specialist administers the approval and audit processes for the state's electronic voting systems. The position oversees the required post-election equipment audits, provides recommendations to the Commission on voting systems modifications, and serves as the state's liaison with federal officials and manufacturers of voting equipment. The local election official technical support position manages the implementation of cybersecurity measures and serves as the point of contact for local election officials and federal officials with regard to cybersecurity issues. Approximately half of the state's 1,850 municipalities do not have in-house IT support and rely on the Commission as a primary source of technical assistance. The security trainer is responsible for developing and facilitating trainings for local election officials on software applications through in-person and online classes.

8. The data specialist, local election official assistant, and IT project manager positions would be funded by program revenue generated from the sale of voter registration data. The data specialist monitors the activity of 3,000 voter registration system users, analyzes data entered by local election officials, and helps remedy errors to ensure the voter rolls are accurate and secure. The local election official assistant is the point of contact for 1,922 election clerks regarding security measures and use of the voter registration system and online learning center. This position also helps to administer subgrant programs for local election officials. The IT project manager is responsible for developing and maintaining the state's IT systems, including the voter registration system and voter information website. This position also coordinates data exchanges with the Departments of Corrections, Health Services, and Transportation.

9. The Commission considers all six positions to be critical to the agency's operations and indicates that the scope of responsibilities could not be absorbed by other staff. If the positions are not extended, the Commission may not have the capacity to adequately maintain elections systems and respond to security incidents. Given that the Commission is required to charge for the sale of voter registration data but is not authorized to spend associated revenues, and that elections security is an ongoing responsibility with evolving threats that require significant staff time, the Committee could include the provisions of the agency's request [Alternative 1].

10. Prior to 2011 Act 32, the Commission was authorized to collect and spend revenues from the sale of voter data through its materials and services annual PR appropriation. Base funding is \$1,000 per year and expenditures are limited to amounts in the schedule for "the costs of publishing documents, locating and copying records, and conducting administrative meetings and conferences, for compiling, disseminating, and making available information prepared by and filed with the Commission, and for supplies, postage, and shipping." Given that the appropriation previously facilitated the use of voter data sales revenue, and that the appropriation's current authorization encompasses records prepared by the Commission, it could be more efficient to modify the existing appropriation rather than creating a new appropriation.

11. If the Committee wanted to facilitate the use of voter data sales revenue without creating a new appropriation, it could modify the existing materials and services appropriation to receive and spend such revenues for the purpose of election security and maintenance of the statewide voter registration system. Under this alternative, the Committee could provide additional expenditure authority of \$149,200 PR in 2021-22, \$349,500 PR in 2022-23, and 3.0 PR positions annually and transfer the balance of voter data sales revenue to the materials and services appropriation. The Commission could submit a passive review request for increased expenditure authority under s. 16.515 of the statutes if needed for elections security or system maintenance. It should also be noted that the Governor has the authority to create federal positions without legislative approval. Therefore, subject to the availability of federal funds, the Governor could create 3.0 FED positions without an act of legislation. Therefore, the Committee could take no action with regard to the federal positions [Alternative 2].

12. Alternatively, the Committee could take no action [Alternative 3]. If the Commission wishes to retain the six project positions, it could request that the Governor create six federal positions funded by the federal elections security grant, as was the practice from June, 2018, to June, 2022. As a result, less federal funding would be available for other elections security measures, including elections system upgrades and grants to local election officials. Voter data sales revenue would continue to be deposited in the FED appropriation and the Commission would not have the authority to spend associated amounts.

ALTERNATIVES

1. Create a continuing appropriation to support elections security and voter registration system maintenance. The appropriation would be funded from the sale of voter registration lists. Specify that the unencumbered balance in the election administration fund associated with the sale of voter lists be transferred to the appropriation.

Convert 6.0 FED project positions to 3.0 FED and 3.0 PR permanent positions to support security infrastructure and provide security support to local officials. Provide \$18,500 FED and \$18,200 PR in 2021-22 and \$221,900 FED and \$218,500 PR in 2022-23 for salaries and fringe benefits, and \$130,000 PR annually for supplies and services. The FED positions would be supported by a federal elections security grant, while the PR positions would be supported by the new election security and maintenance appropriation.

ALT 1	Change to Base	
	Funding	Positions
FED	\$240,400	3.00
PR	<u>498,700</u>	<u>3.00</u>
Total	\$739,100	6.00

2. Provide additional expenditure authority of \$149,200 PR in 2021-22, \$349,500 PR in 2022-23, and 3.0 PR positions annually to the Commission's materials and services appropriation. Authorize all monies received from sales of the voter registration list to be credited to the appropriation for the purpose of election security and maintenance of the statewide voter registration system. Specify that the unencumbered balance in the election administration fund associated with the sale of the voter registration list be transferred to the appropriation.

ALT 2	Change to Base	
	Funding	Positions
PR	\$498,700	3.00

3. Take no action.

Prepared by: Angela Miller