



DEVIN LEMAHIEU

STATE SENATOR

Senate Committee on Elections and Utilities Testimony on Senate Bill 102 April 5, 2017

Vice Chairman Kapenga and Members,

Thank you for hearing my testimony today on Senate Bill 102, the Recount Reform Bill. This bill makes a number of changes to Wisconsin's recount laws to improve the recount process, prevent unnecessary recounts, and protect taxpayers from frivolous recount costs.

While county clerks and local election officials performed admirably under stressful circumstances this past fall, the recount prevented clerks from doing their normal jobs of preparing property tax bills and helping local candidates get ready for spring elections.

The Recount Reform Bill preserves the right to request a recount but limits them to the margin of error. Under the bill only "aggrieved parties" can petition for a recount. An aggrieved party is defined as a candidate that is within 1% of the winning candidate in an election with over 4,000 votes, or within 40 votes in a race under 4,000 votes.

Prior recount history, both in Wisconsin and across the nation, backs up the 1% limit. Since 1979 there have been only 3 instances in Wisconsin where the results of a statewide election have changed via recount. The largest difference where the outcome changed was 0.12%.¹ Nationwide from 2000 to 2015 there were 4,687 statewide general elections leading to 27 recounts. Of those 27, only 3 were successful and all original vote margins were under 0.15%.²

Several other states also limit recounts to the margin of error. At least seven states (DE, MA, MT, NC, RI, UT, VA) have laws limiting recounts to only candidates that lose by 1% or less, with the lowest margin being 0.25%.³ Taking that a step further seven other states don't allow candidates or citizens to petition for a recount at all (AZ, CT, FL, HI, MS, SC, TN).

¹ GAB Testimony on 2013 AB 418 (2/4/2014)

² NCSL Data from FairVote

³ NCSL Table "Recount Provisions--Close Vote Margin Required States"

SB 102 also improves the recount process to ensure taxpayers are not on the hook for any unnecessary recount costs. Some people have asked why this bill is necessary if candidates pay for recounts. Unfortunately, the presidential recount did cost taxpayers money. Multiple counties lost money during the recount process. For example, Brown County alone lost \$3,380. SB 102 fixes this issue by giving counties more time to tabulate recount costs.

Furthermore, the Wisconsin Elections Commission, the agency that is tasked with overseeing and coordinating all recounts, is not able to recoup recount costs. While the Stein campaign was able to fundraise millions off their recount effort, the Elections Commission lost money by fulfilling their recount duties. Elections Commission staff worked 727 hours facilitating the recount this fall, costing state taxpayers over \$23,000. That figure doesn't include time worked by agency management and attorney fees.

We also worked with county clerks to improve the recount process timeline. SB 102 gives the county board of canvassers one more day to begin their recount. The bill also shortens the recount petition deadline by two days to protect Wisconsin's Electoral College votes.

This bill has received the support from the Towns Association and several county clerks, people that understand the time and effort that goes into completing a recount. Thanks again for listening to my testimony today. I encourage you to support Senate Bill 102 and I'm happy to answer any questions you may have about the bill.



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

**Testimony Before the
Senate Committee on Elections and Utilities**

**on
Senate Bill 102
April 5, 2017**

Mr. Chairman and members of the committee, thank you for the opportunity for a public hearing on Senate Bill 102. This bill concerns voting, one of the most sacred traditions we have in our country. While this past presidential election was contentious, the peaceful transition of power and respect for the will of the voters is a hallmark of our national Constitutional system.

Marginal Limit

This past November, for the first time in the history of our state, a candidate requested a recount of the votes cast for President. A fourth-place candidate requested a recount, trailing the leading candidate by 1,372,994 votes, down 46%, receiving 1% of the state's popular vote. She received a recount, causing our hardworking county clerks, boards of canvassers, and hundreds of volunteers around the state to work provide it. Their diligent and dedicated work was wasted, as the fourth-place candidate had no chance of success.

This bill will protect our electoral system from unnecessary strain, expense and embarrassment from frivolous recounts. The bill amends the law in a few simple ways.

First, it limits candidates that may request a recount in an election to candidates within 1% of the leading candidate or within forty votes in an election under 4000 votes cast. These limits are based on historical data.

There have been three statewide recounts where the results flipped since 1979, according to Government Accountability Board testimony. In all three elections, the difference in margin was less than 0.12%. That is eight times less than 1%.

According to the National Conference of State Legislatures since 2000, there have been twenty-seven recounts in 4,687 statewide elections in other states. Three recounts flipped the election results. In all three elections, the difference in margin was less than 0.15%. That is six times less than 1%.

Further, we would not be the first state to put a limit on the requesting candidate's margin.

At least seven other states, Delaware, Massachusetts, Montana, Rhode Island, Utah, and Virginia, both Republican and Democrat states, have a maximum threshold of 1% or less. The smallest margin is 0.25%.

In the 2004 Washington's gubernatorial election the margin of victory was 0.05% (129 votes). The shifted the election to 0.014%.

In the 2006 Vermont State Auditor's race, the margin of victory was 0.0062% (137 votes). The recount shifted the margin by 0.11% (239 votes).

In the 2008 Minnesota U.S. Senate Race flipped the result of a recount. Al Franken trailed by 0.009% (215 votes). The recount shifted the margin by 0.02% (440 votes).

Our historical data and common sense shows that recounts may flip an election when fractions of a percentage point are the difference. Last November, the petitioning candidate was lightyears from winning the election, even after the second-place finisher was graciously conceded the race.

Finally, this bill should not be political. It will apply to all parties equally. Further, any candidate may find herself/himself on the wrong side of any percentage used. For example, had Wisconsin's 2016 presidential election second-place finisher sought a recount under this proposed bill, she was well-within 1%. **She was 0.6% behind the winning candidate.** Passing this measure reflects equally well on all members of our state government as it is common sense and good prudent governance.

Measures to Decrease Unnecessary Pressure And Costs

Also, this bill provides a few small measures to improve the system. First, the requesting candidate shall reimburse the Wisconsin Elections Commission for its expenses. That commission expended twenty-three thousand dollars in the recent recount that was not reimbursed because the statute did not require it.

Second, local governments shall receive fifteen additional days to correctly tabulate their costs. This is an increase from thirty days to forty-five days.

Third, the requesting candidate shall have two less days to determine whether to demand a recount.

Finally, the board of canvassers shall have one more day to organize a recount before it begins.

Conclusion

As we have seen in our state and across the nations, there are very few recounts that are

successful, and even then the margins are so razor thin, it is a testament to the good works our county clerks and other election officials do every election.

This bill is common sense. It recognizes the reality of our already-thorough election results, will ensure Wisconsin is not disenfranchised in future Presidential elections, gives our elections officials the time they need to conduct recounts properly, and ensures that the taxpayers are not left holding the bill.

Thank you for your time. I am open to answer any questions the committee may have.

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

**Senate Committee on Elections and Utilities
April 5, 2017**

**Room 201 Southeast, State Capitol
Public Hearing**

Senate Bill 102

Chairperson LeMahieu and Committee Members:

Thank you for the opportunity to provide testimony on Senate Bill 102. 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 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 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.

If the latter approach is taken, another policy decision would be determining which contests are subject to the shorter filing deadline. Possible distinctions are to either apply the shorter deadline only to Presidential recount petitions, or to apply it to any statewide recount, or 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. 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 would continue under the bill if it is not addressed. 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.

This latter provision, combined with the filing deadline proposed in SB 102, would require a recount to start on the second day after the original canvass is completed. But, as noted above, Section 7 of the bill permits the recount to start on the third day after the recount order is issued, which translates into a starting date that may be five days after the canvass is completed. The bill would be an opportunity to eliminate a conflict in the Statutes which has existed in the past and which has been addressed in a practical and case-by-case manner whenever the State has issued 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 staff costs was \$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 style with a large, prominent "M" and "H".

Michael Haas
Interim Administrator
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TO: Members of the Senate Committee on Election and Utilities:
FROM: Sandy Juno
DATE: April 5, 2017
RE: ***SB-102 Parties Petitioning for Recounts – Public Hearing Comments***

In opening, I want to thank you for the legislative changes you made pertaining to recounts in your last session. The Jill Stein Presidential Recount could have been very costly to Wisconsin taxpayers if the new rules regarding recount costs were not in place. In Brown County alone, the savings to taxpayers exceeded \$150,000.

The Stein Recount was a window for us to see the effect of the recount legislative changes and provide an opportunity for fine tuning. Overall, our recount went well and we demonstrated nationwide that Wisconsin has excellent elections management systems and likewise the accuracy of our election results. However, through this process we were able to identify some important areas where changes need to be addressed.

First of all, we need to change the requirements as to who can request a recount. Recounts should be limited to when a candidate's petition clearly identifies and documents error(s) that could change the outcome of the election. A candidate's petition for a recount should be denied if there is no documented evidence that error occurred and there is no statistical means that a recount could change the outcome of the election. To conduct a recount otherwise becomes a glorified audit of the election equipment. Following each general election, the Wisconsin Elections Commission already schedules random audits of equipment throughout the state for verification of tabulation equipment accuracy.

Second, provided in SB-102 this legislation changes the number of days to return excess funds to the recount candidate from 30 days to 45 days. Thirty days is too short of a period for clerks to assemble invoices and account for all expenses. Likewise, within the 30 days the Elections Commission needs to process payments to jurisdictions and refund monies to the campaign. In accounting practices there is typically a 30 day window for billing but in this case clerks have approximately 2 weeks from certification of the recount to assemble costs from municipalities, county finance departments, and vendors. Just like recounting votes, accuracy in tabulating recount costs is extremely important. Brown County lost over \$3,300 in expenses that weren't refunded because the costs weren't available within 2 weeks of certification to make the 30 day deadline for recount costs reimbursement. It's frustrating that we want the candidate to pay all costs for the recount but we don't allow ourselves enough time to do the proper accounting. And, ironically, the Stein campaign was reimbursed within 30 days but Brown County wasn't reimbursed from the Elections Commission for 60 days from certification!

Third, SB-102 reduces the recount petition filing deadline by 1 day and provides for an additional day for clerks to identify recount locations and space, prepare recount materials, publish legal notices, secure canvassers, assemble election supplies and ballots, and finalize recount details. During the Stein Recount, the succinct timeline was nearly impossible to work with especially since the filing happened the Friday after Thanksgiving and numerous government offices were closed. We were required to have certification done in time for the Electoral College to meet. The timing of the Stein Recount caused clerks many sleepless nights, long days recounting ballots, and problems staffing and managing offices to provide services to constituents and complete their other duties and responsibilities.

Finally, I am requesting that you add verbiage to SB-102 requiring candidates/campaigns that are requesting or involved in recounts to provide clerks with a list of representatives' names of including each individuals' role for the recount. There are 3 major roles such as legal counsel, primary representative, and secondary representative. Each role has differing liberties such as to observe the recount, challenge ballots, and ask questions. Some campaign representatives who showed up at the Stein Recount had no clue what their role was; and since the duties and capabilities vary from one role to another it created a "loosey goosey" recount environment. The uncertainty of representatives' roles can cause some serious problems between the candidates when canvassers are determining how questionable votes are handled. Moreover, if the election recount results aren't satisfactory to one of the candidates, the recount challenges could end up in court for resolution. This is why it's imperative that participants involved in recounts understand the role of campaign representatives.

In closing, please know that I am in full support of this SB-102 and believe that the changes recommended will further improve the recount process and election's management. Thank you for listening to my comments and I would be happy to answer questions.