
Wisconsin Legislative Council



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Director

TO: SENATOR MARK SPREITZER

FROM: Katie Bender-Olson, Principal Attorney, and Peggy Hurley, Senior Staff Attorney

RE: Appointment of WEC Administrator

DATE: August 21, 2023 (Revised August 28, 2023)

You asked about the statutory process for the Wisconsin Elections Commission (WEC) to appoint an administrator and the number of affirmative votes required to advance the appointment to the Senate for confirmation. State law requires a majority of WEC commissioners to appoint an administrator; currently, a majority constitutes at least four votes.

VOTES REQUIRED FOR WEC ACTIONS GENERALLY

Currently, six commissioners serve on WEC: one member appointed by the Senate Majority Leader, one member appointed by the Senate Minority Leader, one member appointed by the Speaker of the Assembly, one member appointed by the Assembly Minority Leader, and two members who formerly served as county or municipal clerks and who are chosen from a list provided by each major political party, are nominated by the Governor, and confirmed by the Senate. [s. 15.61 (1) (a) 1. to 5., Stats.]

State law specifies that most actions by WEC require four votes of the commission. Specifically, s. 5.05 (1e), Stats., states the following: “Any action by the commission, except an action relating to the procedure of the commission, requires the affirmative vote of at least two-thirds of the members.” WEC has six members, which means that a two-thirds vote of the commission constitutes four votes.

VOTES REQUIRED FOR ADMINISTRATOR APPOINTMENT

State law provides that the WEC administrator is appointed by a “majority of the members of the commission,” subject to confirmation by the Senate. [s. 15.61 (1) (b) 1., Stats.] In contrast, state law provides that removal of the administrator requires an affirmative vote of “a majority of all the members voting at a meeting” that was called for the purpose of removal. [s. 15.61 (1) (b) 2., Stats.]

Based on the statutory text and conventions of statutory interpretation in Wisconsin, the best interpretation of state law is that appointment of a WEC administrator requires four votes of the commission. This is because the provision relating directly to the appointment of an administrator refers to a “majority of the members of the commission,” and not to a majority of those voting, and because actions of the commission generally require a two-thirds vote.

State law refers to members “present and voting” in other statutory provisions, but refers to a majority “of the members” for appointing a WEC administrator.¹ If a majority of a commission meant a majority of those members voting, then the appearance of this language in other statutes would be superfluous.² Additionally, the statutory language for removing the WEC administrator refers to a majority of “all members voting at a meeting,” rather than a majority of “the members of the commission.” The Legislature chose not to use similar language for the appointment of an administrator, supporting the conclusion that appointment requires an affirmative vote by a majority of WEC members rather than a majority of members voting.

The language of s. 5.05 (1e), Stats., further supports the conclusion that appointment of a WEC administrator necessitates four votes. The provision requires an affirmative vote of at least two-thirds of commission members for any action not relating to commission procedure.³ This general requirement for WEC action is buttressed by the more specific requirement for a vote by a majority of members to appoint an administrator.

Please let us know if we can provide any further assistance.

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¹ See e.g., ss. 33.44 (8) (L), 33.55 (5), 59.60 (8) (b), 59.69 (5) (e) 5m., 66.0307 (4) (d) 2., 116.07 (3), and 119.13 (1), Stats.

² See e.g., *Hutson v. State pers. Comm'n*, [2003 WI 97, ¶ 49, 263 Wis.2d 612, 665 N.W.2d 212](#).

³ Some may argue that s. 5.05 (1e), Stats., and its requirement for a two-thirds affirmative vote does not apply to the appointment of a WEC administrator based on s. 5.05 (3d), Stats. That provision states that the commission “shall appoint an administrator in the manner provided under s. 15.61 (1) (b).” However, the subsection does not create an explicit exemption from the two-thirds vote requirement because it lacks language such as “Notwithstanding (1e), the commission shall appoint an administrator....” Further, as discussed above, the language of s. 15.61 (1) (b) itself requires a majority vote of the commissioners, and not a majority of those voting. Thus, the statutory language independently requires four votes for appointment of an administrator.