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# Wisconsin Legislative Council



Anne Sappenfield  
Director

TO: REPRESENTATIVE JANEL BRANDTJEN

FROM: Peggy Hurley, Senior Staff Attorney

RE: Appointment of the Wisconsin Elections Commission Administrator

DATE: January 2, 2024

You asked for an explanation of the process to appoint an administrator for the Wisconsin Elections Commission (WEC) in the event that the current administrator is removed from office after impeachment. In short, removal by impeachment creates a vacancy in the position that the WEC commissioners may fill by appointment, subject to approval by the Senate. If, after a statutorily prescribed time, the WEC commissioners fail to fill the position, the Joint Committee on Legislative Organization (JCLO) may appoint an interim administrator.

## IMPEACHMENT

Under current law<sup>1</sup> and pursuant to article VII, s. 1 of the Wisconsin Constitution, a “civil officer” of the state may be removed from office by impeachment for “corrupt conduct in office, or for crimes and misdemeanors.” Impeachment is a two-step process: first, a simple majority of elected members of the Assembly must concur in the impeachment and second, after a trial is held in the Senate, a two-thirds majority of the members present in the Senate must vote to convict.

The Wisconsin Constitution specifies that a judicial officer may not exercise his or her office after impeachment, until he or she has been acquitted after trial in the Senate. Presumably, the WEC administrator and any other civil officer who has been impeached may continue to exercise his or her office until he or she is convicted after a trial in the Senate. Conviction after impeachment constitutes removal from office.<sup>2</sup>

## APPOINTMENT AFTER IMPEACHMENT AND CONVICTION

If, after impeachment and trial, the Senate votes to convict the WEC administrator, the administrator is removed from office and the position is considered vacant.<sup>3</sup> Under current law, a majority of the six WEC commissioners must appoint an administrator and the appointment is subject to the advice and

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<sup>1</sup> s. 17.06 (1), Stats.

<sup>2</sup> Wis. Const. art. VII, s. 1.

<sup>3</sup> Wisconsin Constitution, Article VII, Section 1, states that conviction after impeachment “shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit or trust under the state; but the party impeached shall be liable to indictment, trial and punishment according to law.”

consent of the Senate.<sup>4</sup> If the commissioners are unable to do so within 45 days after the vacancy occurs, JCLO may appoint an interim administrator.

Section 15.61 (1) (b) 1. sets out the procedure:

If a vacancy occurs in the administrator position, the commission shall appoint a new administrator, and submit the appointment for senate confirmation, no later than 45 days after the date of the vacancy. If the commission has not appointed a new administrator at the end of the 45-day period, the joint committee on legislative organization shall appoint an interim administrator to serve until a new administrator has been confirmed by the senate but for a term of no longer than one year. If the administrator position remains vacant at the end of the one-year period, the process for filling the vacancy described in this subdivision is repeated until the vacancy is filled.

In sum, while a civil officer who is not a judicial officer may continue to exercise the duties of his or her office after impeachment, a civil officer who is convicted after a trial in the Senate is removed from office as a result of the conviction. In the case of the WEC administrator, removal creates a vacancy in the office that may be filled by the WEC commissioners, with the advice and consent of the Senate. JCLO may appoint an interim administrator if the WEC commissioners fail to appoint an administrator within 45 days, but the interim administrator may serve only until a new administrator is appointed by the WEC commissioners and confirmed by the Senate. Additionally, an administrator appointed by JCLO may serve for only one year before the WEC commissioners' process of appointment begins anew.

Please let me know if I can provide any further assistance.

PH:jal

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<sup>4</sup> s. 15.61 (1) (b) 1., Stats.