



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5270/1
MPG&JK:amn

2021 SENATE BILL 936

February 3, 2022 - Introduced by Senators BERNIER, COWLES, DARLING, STROEBEL, FELZKOWSKI, MARKLEIN and WANGGAARD, cosponsored by Representatives MACCO, ARMSTRONG, EDMING, GUNDRUM, KNODL, KRUG, KUGLITSCH, MAGNAFICI, MOSES, MURPHY, MURSAU, PENTERMAN, SCHRAA and SPIROS. Referred to Committee on Elections, Election Process Reform and Ethics.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 7.08 (6); *to amend* 5.05 (5e); and *to create*
2 5.05 (2n), 5.05 (5s) (an), 5.05 (19), 5.05 (20), 7.08 (6) (a) 1. to 3. and (b), 9.01 (1)
3 (b) 13. and 13.94 (1) (w) of the statutes; **relating to:** the resolution of complaints
4 filed with the Elections Commission, submitting to the legislature copies of
5 complaints filed with the Elections Commission, reports concerning possible
6 violations of election laws, postelection audits of electronic voting systems,
7 printing absentee ballot applications for recounts, and granting rule-making
8 authority.

Analysis by the Legislative Reference Bureau

FORMAL COMPLAINTS CONCERNING ELECTION LAW VIOLATIONS

Under current law, any person may file a complaint with the Elections Commission alleging a violation of election laws by a voter or an election official. The commission may only initiate an investigation of an alleged violation of election laws based on a sworn complaint filed with the commission. Neither the commission nor the members or employees of the commission, including the administrator, may file a sworn complaint for purposes of initiating an investigation. In addition, current law authorizes any eligible voter to file a complaint with the commission requesting the commission to compel an election official to conform his or her conduct to the law

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or to restrain the official from taking any action inconsistent with the law. Current law also authorizes a person to file a complaint with the commission indicating that the person believes a violation of the federal Help America Vote Act regarding an election for a national office in this state occurred, is occurring, or is proposed to occur.

Current law prohibits public access to records obtained or prepared by the Elections Commission in connection with an investigation, including the full text of any complaint filed with the commission, with certain exceptions. For example, the commission must provide such records to the Joint Committee on Finance in order to receive supplemental funds for an ongoing investigation. In addition, the commission must provide investigatory records to the Legislative Audit Bureau to the extent necessary for the bureau to carry out its duties.

This bill requires that the Elections Commission resolve each complaint filed with the commission no later than 60 days after receiving the complaint unless the commission, by an affirmative vote of two-thirds of the members, approves extending that time by an additional 60-day period. The bill allows the commission to adopt more than one 60-day extension. Under the bill, during the 60-day period and any extension of that period, the commission must determine, by an affirmative vote of two-thirds of the members, whether to dismiss the complaint; initiate an investigation; or grant the relief, in whole or in part, requested by the complainant. If the commission fails to dismiss a complaint, the commission must initiate an investigation or refer the matter to the attorney general or to a district attorney. Finally, under the bill, a person who alleges that an action of the commission violated or resulted in the violation of election laws may file a complaint and commence suit in the circuit court for any county where the alleged violation occurred.

The bill also requires the Elections Commission to provide a copy of the full text of any complaint received by the commission, along with documentation specifying how the complaint was resolved, to the representative of the assembly of the assembly district and the senator of the senate district where the violation alleged in the complaint occurred, is occurring, or is proposed to occur and to the cochairpersons of the legislative standing committees with jurisdiction over elections no later than 30 days after the complaint was resolved. The bill requires the commission to redact the names of individuals from the complaints and documentation so provided.

REPORTS CONCERNING ELECTION LAW VIOLATIONS

This bill requires the Elections Commission to submit to the legislature and the governor no later than January 31 each year a report that includes all of the following:

1. The number of formal complaints filed with the commission in the previous year, a description of each complaint, and a description of all actions the commission took to address the complaint.
2. The total number of investigations the commission conducted in the previous year and a description of the nature of each investigation.
3. The number of informal reports of possible violations of election laws, including violations of election laws or other misconduct alleged to have been

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committed by election officials, that the commission received the previous year, including reports received on the toll-free hotline current law requires the commission to maintain for voters to report possible violations of election laws. The commission's report must include a description of each general category of concerns reported to the commission and an explanation of each such category.

The bill additionally requires the Elections Commission to promulgate rules establishing procedures for the commission's consideration and handling of both formal complaints and informal reports of possible violations of election laws, including violations of election laws or other misconduct alleged to have been committed by election officials.

POSTELECTION AUDITS OF ELECTRONIC VOTING SYSTEMS

Under current law, after each general election, the Elections Commission is required to perform an audit of electronic voting systems used in the election and take remedial actions if the audit yields an error rate exceeding that which is permitted under standards established by the Federal Election Commission.

Under the bill, each such audit must be completed no later than November 30 after each general election and must include all of the following:

1. Electronic voting system equipment used in at least four reporting units in the city of Milwaukee, at least four reporting units in the city of Madison, at least one reporting unit in each of the 20 other largest municipalities in Wisconsin, and at least 5 percent of the reporting units in all other municipalities combined.

2. At least one piece of electronic voting system equipment used in each county in the state.

3. At least five reporting units that used each type of electronic voting system approved for use in the state.

The bill also requires the Elections Commission to promulgate rules that do all of the following:

1. Establish an error rate for purposes of the postelection audits. The bill eliminates the requirement that the error rate not exceed that permitted under standards established by the Federal Election Commission.

2. Establish a process for the postelection audits that provides for the random selection of reporting units and that, except with respect to audits conducted in the cities of Milwaukee and Madison and the 20 other largest municipalities in Wisconsin, as specified above, ensures reporting units are selected for audit from geographic areas throughout Wisconsin.

Finally, the bill requires the Legislative Audit Bureau to analyze the postelection audits conducted after each general election and make recommendations to the legislature for improving the audit process and for improving the accuracy of voting systems, if it determines that improvements are needed. The bill requires LAB to submit its report no later than the January 15 following each general election. Under current law, the chairperson of the Elections Commission, or the chairperson's designee, is required to canvass and certify the results of the general election on or before December 1 following election.

SENATE BILL 936**PRINTING ABSENTEE BALLOT APPLICATIONS FOR RECOUNTS**

Under this bill, in the event of a recount, the municipal clerk is required to print and make available for purposes of the recount paper copies of all absentee ballot applications received electronically for the election.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 5.05 (2n) of the statutes is created to read:

2 **5.05 (2n) RESOLUTION OF COMPLAINTS.** (a) The commission shall resolve each
3 complaint received by the commission, including a complaint received under s. 5.06,
4 no later than 60 days after receiving the complaint unless the members of the
5 commission, by an affirmative vote of two-thirds of the members, approve extending
6 the time for resolving the complaint by an additional period of 60 days. The
7 commission may adopt more than one 60-day extension under this subsection.
8 During the 60-day period, and any extension of that period, the commission shall
9 determine, by an affirmative vote of two-thirds of the members, whether to dismiss
10 the complaint; initiate an investigation; or grant the relief, in whole or in part,
11 requested by the complainant. If the commission fails to dismiss a complaint by an
12 affirmative vote of two-thirds of the members, the commission shall initiate an
13 investigation or refer the matter to the attorney general or to a district attorney, as
14 provided under this section.

15 (b) A person who alleges that an action of the commission violated or resulted
16 in the violation of the laws under chs. 5 to 10 or 12 may file a sworn complaint and
17 commence suit in the circuit court for any county where the alleged violation
18 occurred without first filing the complaint with the commission.

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1 **SECTION 2.** 5.05 (5e) of the statutes is amended to read:

2 5.05 **(5e)** ANNUAL REPORT. The commission shall submit an annual report under
3 s. 15.04 (1) (d) and shall include in its annual report the names and duties of all
4 individuals employed by the commission and a summary of its determinations and
5 advisory opinions issued under sub. (6a). Except as authorized or required under
6 sub. (5s) (f), the commission shall make sufficient alterations in the summaries to
7 prevent disclosing the identities of individuals or organizations involved in the
8 decisions or opinions. The commission shall identify in its report the statutory duties
9 of the commission administrator, together with a description of the manner in which
10 those duties are being fulfilled. ~~Notwithstanding sub. (5s) and s. 12.13 (5), the~~
11 ~~commission shall also specify in its report the total number of investigations~~
12 ~~conducted by the commission since the last annual report and a description of the~~
13 ~~nature of each investigation.~~ The commission shall make such further reports on the
14 matters within its jurisdiction and such recommendations for further legislation as
15 it deems desirable.

16 **SECTION 3.** 5.05 (5s) (an) of the statutes is created to read:

17 5.05 **(5s)** (an) No later than 30 days following the resolution of each complaint
18 filed with the commission under sub. (2m) (c) or s. 5.06 or 5.061, the commission shall
19 provide a copy of the full text of the complaint, with all personally identifiable
20 information, as defined in s. 19.62 (5), redacted, and documentation specifying how
21 the complaint was resolved to the representative of the assembly of the assembly
22 district and the senator of the senate district where the violation alleged in the
23 complaint occurred, is occurring, or is proposed to occur and to the cochairpersons
24 of the assembly and senate standing committees with jurisdiction over elections. The

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1 commission shall redact all names of individuals from all copies of complaints and
2 documentation provided under this paragraph.

3 **SECTION 4.** 5.05 (19) of the statutes is created to read:

4 **5.05 (19) REPORTS OF ALLEGED ELECTION LAW VIOLATIONS.** (a) Notwithstanding
5 sub. (5s) and s. 12.13 (5), annually, no later than January 31, the commission shall
6 submit to the chief clerk of each house of the legislature for referral to the appropriate
7 standing committees under s. 13.172 (2) and to the governor a report that includes
8 all of the following:

9 1. The number of complaints filed with the commission in the previous year
10 under sub. (2m) (c) and ss. 5.06 and 5.061, a description of each complaint, and a
11 description of all actions the commission took to address the complaint.

12 2. The total number of investigations the commission conducted in the previous
13 year and a description of the nature of each investigation.

14 3. The number of informal reports, including reports received via the toll-free
15 hotline maintained under sub. (13), of possible violations of election laws, including
16 violations of election laws or other misconduct alleged to have been committed by
17 election officials, that the commission received the previous year. The report shall
18 include a description of each general category of concerns reported to the commission
19 and an explanation of each such category.

20 (b) Annually, the administrator shall testify before the standing committees
21 specified in par. (a) at the direction of the standing committees concerning the
22 commission's report under par. (a).

23 (c) The commission shall provide a copy of its annual report under par. (a) to
24 each county and municipal clerk and board of election commissioners.

25 **SECTION 5.** 5.05 (20) of the statutes is created to read:

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1 5.05 (20) RULES REGARDING REPORTS OF ELECTION RELATED CONCERNS. The
2 commission shall promulgate rules establishing procedures for the commission's
3 consideration and handling of all formal complaints and informal reports of possible
4 violations of election laws, including violations of election laws or other misconduct
5 alleged to have been committed by election officials, that the commission receives,
6 including reports received via the toll-free hotline maintained under sub. (13).

7 **SECTION 6.** 7.08 (6) of the statutes is renumbered 7.08 (6) (a) (intro.) and
8 amended to read:

9 7.08 (6) (a) (intro.) Following Complete, no later than November 30 following
10 each general election, an audit of the performance of each electronic voting system
11 used in this state to determine the error rate of the system in counting ballots that
12 are validly cast by electors. If the error rate exceeds the rate permitted under
13 ~~standards of the federal election commission in effect on October 29, 2002~~ the rules
14 promulgated under par. (b) 1., the commission shall take remedial action and order
15 remedial action to be taken by affected counties and municipalities to ensure
16 compliance with ~~the standards~~ those rules. Each county and municipality shall
17 comply with any order received under this subsection. Each audit performed under
18 this subsection shall include all of the following:

19 **SECTION 7.** 7.08 (6) (a) 1. to 3. and (b) of the statutes are created to read:

20 7.08 (6) (a) 1. Electronic voting system equipment used in at least 4 reporting
21 units in the city of Milwaukee, at least 4 reporting units in the city of Madison, at
22 least one reporting unit in each of the 20 other largest municipalities, and at least
23 5 percent of the reporting units in all other municipalities combined.

24 2. At least one piece of electronic voting system equipment used in each county
25 in this state.

