



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0846/2
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2021 ASSEMBLY BILL 398

June 14, 2021 - Introduced by Representatives BRANDTJEN, RAMTHUN, CABRAL-GUEVARA, DITTRICH, EDMING, GUNDRUM, KNODL, KUGLITSCH, MAGNAFICI, MURPHY, ROZAR, SCHRAA, TITTL and WICHGERS, cosponsored by Senators JACQUE, BALLWEG, FELZKOWSKI and WANGGAARD. Referred to Committee on Government Accountability and Oversight.

1 **AN ACT** *to amend* 5.05 (2m) (a) and 6.56 (4); and *to create* 5.05 (2m) (fg), 5.05
2 (2m) (fh) and 5.05 (2m) (fi) of the statutes; **relating to:** investigations by the
3 Elections Commission based on information provided by the Electronic
4 Registration Information Center and municipalities indicating that Wisconsin
5 registered voters may have voted more than once in the same election or that
6 individuals voted in an election despite being disqualified from voting for
7 certain reasons.

Analysis by the Legislative Reference Bureau

Under current law, the administrator of the Elections Commission is required to enter into a membership agreement with the Electronic Registration Information Center (ERIC) to assist the commission in maintaining Wisconsin's official voter registration list. The information ERIC provides to the commission includes information about voters registered in Wisconsin who may have voted more than once in the same election because the voter also voted in another state.

With respect to ERIC, this bill requires the commission to do all of the following within 30 days after each general election:

1. Request, obtain, and investigate information provided by ERIC indicating that individuals registered to vote in Wisconsin may have voted in another state in the same election or that individuals voted in an election who were disqualified from

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voting because of a felony conviction or because the individual has been adjudicated incompetent to vote.

2. If the commission finds probable cause to believe a voter voted more than once in the same election or voted in an election when the individual was disqualified from voting because of a felony conviction or because the individual has been adjudicated incompetent to vote, refer the matter to the appropriate district attorney and to the attorney general.

3. Submit a report to the legislature that describes in detail each such referral to a district attorney and the attorney general.

Also, under current law, after an election, each municipal clerk and municipal board of election commissioners is required to perform an audit to assure that no voter voted more than once in the election. If a municipal clerk or municipal board of election commissioners has good reason to believe that a voter voted more than once in an election, the municipal clerk or board of election commissioners is required to send the voter a letter regarding the matter and send a copy of the letter and subsequent information to the local district attorney and the Elections Commission.

This bill requires the commission to verify receipt by district attorneys of the required letters and information. The bill further provides that if, after investigation of the letter and information provided by a municipal clerk or municipal board of election commissioners, the commission determines that there is probable cause to believe that a voter voted more than once in the same election, the commission must refer the matter to the appropriate district attorney and to the attorney general.

Additionally, the bill requires the commission to initiate an investigation, without the filing of a sworn complaint, of information from ERIC or a municipal clerk or municipal board of election commissioners indicating a voter may have voted more than once in an election. Under current law, the commission may generally initiate an investigation relating to an election law violation only if a sworn complaint is filed with the commission alleging a violation.

For further information see the state and local 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 (2m) (a) of the statutes is amended to read:
2 5.05 **(2m)** (a) The commission shall investigate violations of laws administered
3 by the commission and may prosecute alleged civil violations of those laws, directly
4 or through its agents under this subsection, pursuant to all statutes granting or
5 assigning that authority or responsibility to the commission. Prosecution of alleged
6 criminal violations investigated by the commission may be brought only as provided

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1 in par. (c) 11., 14., 15., and 16. and s. 978.05 (1). For purposes of this subsection,
2 except as provided under par. (fi), the commission may only initiate an investigation
3 of an alleged violation of chs. 5 to 10 and 12, other than an offense described under
4 par. (c) 12., based on a sworn complaint filed with the commission, as provided under
5 par. (c). Neither the commission nor any member or employee of the commission,
6 including the commission administrator, may file a sworn complaint for purposes of
7 this subsection.

8 **SECTION 2.** 5.05 (2m) (fg) of the statutes is created to read:

9 5.05 (2m) (fg) No later than 30 days after each general election, the commission
10 shall do all of the following:

11 1. Request, obtain, and investigate information from the Electronic
12 Registration Information Center, Inc., indicating that individuals registered to vote
13 in this state voted more than once in the same election or that individuals
14 disqualified from voting under s. 6.03 (1) (a) and (3) or under s. 6.03 (1) (b) voted in
15 an election.

16 2. If, after investigation under subd. 1., the commission determines that there
17 is probable cause to believe that an individual voted more than once in the same
18 election or that an individual disqualified from voting under s. 6.03 (1) (a) and (3) or
19 under s. 6.03 (1) (b) voted in an election, refer the matter to the district attorney as
20 provided in par. (c) 11. and, except as provided in par. (i), to the attorney general.

21 3. Submit to the chief clerk of each house of the legislature for referral to the
22 appropriate standing committees under s. 13.172 (3) a report that describes in detail
23 each referral made under subd. 2., including, with respect to each individual for
24 whom the commission found there is probable cause to believe that he or she voted
25 more than once in the same election or voted in an election at which he or she was

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1 disqualified from voting under s. 6.03 (1) (a) and (3) or under s. 6.03 (1) (b), the
2 individual's identity and an identification of each location, including the
3 municipality, county, and state where the individual is alleged to have voted in the
4 election.

5 **SECTION 3.** 5.05 (2m) (fh) of the statutes is created to read:

6 5.05 **(2m)** (fh) 1. If, after investigation of information received under s. 6.56 (4),
7 the commission determines there is probable cause to believe an individual voted
8 more than once in the same election, the commission shall refer the matter to the
9 district attorney as provided in par. (c) 11. and, except as provided in par. (i), to the
10 attorney general.

11 2. In each report it submits to the legislature under s. 7.15 (1) (g), the
12 commission shall include information relating to its duties under this paragraph,
13 including the number of letters the commission received under s. 6.56 (4) after an
14 election and the number of referrals made under subd. 1.; a detailed description of
15 each referral; and the outcome of the referral, including whether the referral
16 resulted in a criminal prosecution, an explanation of the disposition of that
17 prosecution, and, if the referral did not result in a criminal prosecution, the reasons
18 for not prosecuting.

19 **SECTION 4.** 5.05 (2m) (fi) of the statutes is created to read:

20 5.05 **(2m)** (fi) 1. Each county and municipal clerk and board of election
21 commissioners shall cooperate fully with commission investigations under pars. (fg)
22 and (fh).

23 2. The commission shall initiate an investigation under pars. (fg) and (fh), and
24 shall initiate an investigation based on any information the commission receives

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1 from the Electronic Registration Information Center, Inc., without the filing of a
2 sworn complaint under par. (a).

3 **SECTION 5.** 6.56 (4) of the statutes is amended to read:

4 6.56 (4) After each election, the municipal clerk shall perform an audit to
5 assure that no person has been allowed to vote more than once. Whenever the
6 municipal clerk has good reason to believe that a person has voted more than once
7 in an election, the clerk shall send the person a 1st class letter marked in accordance
8 with postal regulations to ensure that it will be returned to the clerk if the elector
9 does not reside at the address given on the letter. The letter shall inform the person
10 that all registrations relating to that person may be changed from eligible to
11 ineligible status within 7 days unless the person contacts the office of the clerk to
12 clarify the matter. A copy of the letter and of any subsequent information received
13 from or about the addressee shall be sent to the district attorney for the county where
14 the person resides and the commission. The commission shall verify the district
15 attorney's receipt of each letter and all subsequent information required to be sent
16 to the district attorney under this subsection.

17 (END)