



2023 ASSEMBLY BILL 749

December 6, 2023 - Introduced by Representatives ALLEN, MURPHY, BEHNKE, BODDEN, BRANDTJEN, GOEBEN, O'CONNOR, RETTINGER and WICHGERS, cosponsored by Senators TOMCZYK and NASS. Referred to Committee on Campaigns and Elections.

1 **AN ACT** *to renumber* 5.07; *to amend* 7.60 (5); and *to create* 5.07 (2), 7.08 (13)
2 and 13.94 (11) of the statutes; **relating to:** postelection audits by the
3 Legislative Audit Bureau and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires the Legislative Audit Bureau to conduct a performance audit of election processes following a general election. The bill also requires the Elections Commission to assist the counties and municipalities with the audit. Under the bill, immediately following the state certification of the election results, the commission randomly selects four counties and one city and one village from each of those counties, except that one of the counties must be one of the ten most populous counties in the state. LAB then conducts its audit in the municipalities selected by the commission.

Under the bill, LAB may physically handle and examine all original election materials, including ballots and absentee ballot certificates, at LAB's discretion, at a secure site established by the municipal clerk and the commission. The bill also requires the commission to ensure that LAB is able to conduct and complete its audit and that the municipal clerks maintain management authority over the retention and security of election records. Under the bill, the public is allowed to observe the audit in observation areas established by the municipal clerk.

LAB must report any incident of noncompliance with the requirements under the bill to the legislature. In addition, any person may commence an action in circuit court to compel an election official or the commission to comply with those

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requirements. If a court finds that an election official or the commission is noncompliant, the official or commission is subject to a forfeiture of \$500 for each day of noncompliance. Finally, LAB must submit a report of its findings and recommendations to the legislature no later than June 30 of the odd-numbered year following the election.

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.** 5.07 of the statutes is renumbered 5.07 (1).

2 **SECTION 2.** 5.07 (2) of the statutes is created to read:

3 5.07 (2) Notwithstanding s. 5.06 (2), any person may commence an action in
4 circuit court to compel an election official or the commission to comply with s. 7.08
5 (13). If a court finds that an election official or the commission is not complying with
6 s. 7.08 (13), the official or commission is subject to a forfeiture of \$500 for each day
7 of noncompliance.

8 **SECTION 3.** 7.08 (13) of the statutes is created to read:

9 7.08 (13) LEGISLATIVE AUDIT BUREAU; POSTELECTION AUDIT. (a) Following each
10 general election, assist the counties and municipalities with the audit performed by
11 the legislative audit bureau, as authorized under s. 13.94 (11). Immediately after its
12 certification of the election results under s. 7.70, the commission shall randomly
13 select 4 counties and one city and one village from each of those counties, except that
14 one of the counties shall be one of the 10 most populous counties in the state. The
15 legislative audit bureau shall conduct its audit in the municipalities selected by the
16 commission.

17 (b) The municipal clerks of the municipalities selected under par. (a) shall allow
18 the legislative audit bureau to physically handle and examine all original election

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1 materials, including ballots and absentee ballot certificates, at the bureau's
2 discretion, at a secure site established by the municipal clerk and the commission.
3 All election materials examined by the bureau shall remain in the custody of the
4 municipal clerk. The commission shall ensure that the legislative audit bureau is
5 able to conduct and complete its audit and that the municipal clerks maintain
6 management authority over the retention and security of election records.

7 (c) All steps of the audit conducted under par. (a) shall be performed publicly,
8 and the municipal clerk shall establish observation areas at the site where the audit
9 is conducted that are not less than 3 feet from nor more than 8 feet from any area
10 where the legislative audit bureau is examining election materials.

11 (d) The legislative audit bureau shall report any incident of noncompliance
12 with this subsection to the speaker of the assembly, the president of the senate, and
13 to the appropriate standing committees of the legislature with jurisdiction over
14 elections, as provided under s. 13.172 (3).

15 **SECTION 4.** 7.60 (5) of the statutes is amended to read:

16 7.60 (5) REPORTING. (a) Immediately following the canvass, the county clerk
17 shall deliver or transmit to the elections commission and the legislative audit bureau
18 a certified copy of each statement of the county board of canvassers for president and
19 vice president, state officials, senators and representatives in congress, state
20 legislators, justice, court of appeals judge, circuit judge, district attorney, and
21 metropolitan sewerage commissioners, if the commissioners are elected under s.
22 200.09 (11) (am). The statement shall record the returns for each office or
23 referendum by ward, unless combined returns are authorized under s. 5.15 (6) (b) in
24 which case the statement shall record the returns for each group of combined wards.
25 Following primaries the county clerk shall enclose on forms prescribed by the

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1 elections commission the names, party or principle designation, if any, and number
2 of votes received by each candidate recorded in the same manner. The county clerk
3 shall deliver or transmit the certified statement to the elections commission no later
4 than 9 days after each primary except the partisan primary, no later than 10 days
5 after the partisan primary and any other election except the general election, and no
6 later than 14 days after the general election. The county clerk shall deliver or
7 transmit the certified statement regarding the general election to the legislative
8 audit bureau no later than 14 days after the general election. The board of
9 canvassers shall deliver or transmit a certified copy of each statement for any
10 technical college district referendum to the secretary of the technical college district
11 board.

12 (b) If the board of canvassers becomes aware of a material mistake in the
13 canvass of an election for state or national office or a statewide or technical college
14 district referendum prior to the close of business on the day the elections commission
15 receives returns from the last county board of canvassers with respect to that
16 canvass, the board of canvassers may petition the elections commission to reopen
17 and correct the canvass. The elections commission shall direct the canvass to be
18 reopened and corrected if it determines that the public interest so requires. If the
19 elections commission directs the canvass to be reopened, the board of canvassers
20 shall reconvene and transmit a certified corrected copy of the canvass statement to
21 the elections commission and the legislative audit bureau or to secretary of the
22 technical college district board.

23 **SECTION 5.** 13.94 (11) of the statutes is created to read:

24 13.94 (11) POSTELECTION AUDIT. Following each general election, the state
25 auditor shall conduct a performance audit of the election processes as provided under

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1 s. 7.08 (13). The legislative audit bureau shall submit a report of its findings and
2 recommendations to the legislature, as provided under s. 13.172 (2), no later than
3 June 30 of the odd-numbered year following the election.

4 (END)