2021 SENATE BILL 941

February 3, 2022 – Introduced by Senators LeMahieu, Darling and Stroebel, cosponsored by Representatives Vos, Armstrong, Behnke, Cabral-Guevara, Dallman, Dittrich, Gundrum, Katsma, Knodl, Krug, Kuglitsch, Magnafici, Murphy, Mursau, Penterman, Plumer, Rozar, Sanfelippo, Steffen, Tusler and Wittke. Referred to Committee on Elections, Election Process Reform and Ethics.

1   An Act *to renumber and amend* 6.275 (2); *to amend* 5.05 (2m) (e) and 5.05 (4);

2   and *to create* 5.05 (19), 6.275 (1) (ab), 6.275 (1) (db), 6.275 (1) (eb), 6.275 (1) (ec),

3   6.275 (1) (ed), 6.275 (1) (ee), 6.275 (1) (ef), 6.275 (1) (eg), 6.275 (1) (eh), 6.275 (1)

4   (g), 6.275 (1m), 6.275 (2) (b), 6.36 (7) and 16.54 (8s) of the statutes; **relating to:**

5   overseeing the administration of elections.

Analysis by the Legislative Reference Bureau

This bill make a number of changes to current law regarding the oversight of elections in this state.

Federal funds

The governor is authorized under current law to accept funds from the federal government and to designate the state agency that will receive the funds. Generally, a designated state agency must expend the funds consistent with federal requirements for accepting and spending the funds. Under the bill, before the governor may disburse federal funds to the Elections Commission, the commission must submit a plan for use of the funds to the Joint Committee on Finance. If the committee does not schedule a meeting to review the plan within 14 days of receiving the plan from the commission, the commission may implement the plan and the governor may disburse the funds. If the committee schedules a meeting to review the plan within 14 days of receiving the plan from the commission, the commission may not implement the plan, and the governor may not disburse the funds, without the committee's approval.

Federal election guidance

The bill requires state agencies to submit federal election guidance, and communications from the federal government or the Department of Justice related to that guidance, to the senate majority leader, the senate minority leader, the speaker of the assembly, the assembly minority leader, the chairpersons of the standing committees with jurisdiction concerning elections, and the cochairpersons of the Joint Committee for Review of Administrative Rules no later than 48 hours after receiving the guidance or communication. Under the bill, a state agency make not take any action to implement federal election guidance without the approval of JCRAR, except that if JCRAR does not schedule a meeting to review the guidance within 30 days of receiving the it, the state agency may implement the guidance.

The bill defines "federal election guidance" as any directive or guidance issued by the federal department of justice or any other executive branch agency of the federal government pertaining to elections, including the times, places, and manner for administering elections in this state.

Registration and voting statistics

Under current law, no later than 30 days after an election, each municipal clerk must submit a report to the Elections Commission and to the county clerk of the county where the municipality is located that provides certain registration and voting statistics. The report must provide the number of voters who voted in the election; the number of voters who registered before election day; the number of voters who registered on election day; the number of voters who voted by absentee ballot; and, generally, the results of the postelection audit to verify election day registrations.

Under the bill, the report that the municipal clerk submits to the commission and the county clerk after each election must also include the following:

1. The total number of registered voters residing in the municipality on the day of the election

2. The total number of voters who registered to vote beginning on the day of the immediately preceding election and ending on the day of the most recent election.

3. The total number of voters voting absentee ballots by mail and the total number of voters voting absentee ballots in person.

4. The total number absentee ballots returned by voters that were not counted and the reasons for why such ballots were not counted.

5. The total number of voters casting ballots at the polling place.

6. The total number of voters casting provisional ballots and the number of such ballots they were ultimately not counted.

7. The total number of defective ballots that election officials recreated, with a separate itemization of such ballots cast by military and oversea electors, damaged ballots, and ballots recreated for other reasons.

8. The location of each residential care facility and qualified retirement home to which the municipality dispatched special voting deputies and the total number of ballots cast by residents of the facilities and homes using special voting deputies.

9. The number of voters whose personally identifiable information on the official registration list did not match the personally identifiable information

maintained by the Department of Transportation beginning on the day of the immediately preceding election and ending on the day of the most recent election; a description of each mismatch; and the number of such voters whose registration status was changed from eligible to ineligible.

The bill also requires that, no later than 30 days after each election at which a state or national office is filled, each county clerk submit to the Elections Commission a report that indicates the number of ballots that the county clerk ordered for each municipality and distributed to each municipality for the election; the number of ballots ultimately cast in that election; the number of ballots rejected and the reasons for rejection; the number of unused ballots; any other action that the county performed to reconcile the total number of ballots with the number of votes cast; and an explanation of any discrepancy between the number of ballots ordered and the number distributed and of any discrepancy between the number of ballots distributed and the number cast or rejected.

Under the bill, within seven days after receiving a report from a municipal clerk under current law or from a county clerk under the bill, the Elections Commission must publish the report on the commission's Internet site in a format that is easily accessible to the public. In addition, the commission must submit each county clerk's report to the legislature and the Legislative Audit Bureau within seven days after receiving the report. Under the bill, LAB reviews the report and, within 30 days after receiving the report, submits a report to the legislature with its findings and recommendations, including a description of any discrepancies it found and any explanation of those discrepancies it received from local election officials.

Elections Commission legal counsel

Current law requires that all employees of the Elections Commission be nonpartisan. This bill requires that legal counsel for the commission be partisan. Under the bill, the legislative leadership of one of the two major political parties that received the largest number of votes for president at the most recent presidential election appoints one individual to serve as legal counsel and the legislative leadership of the other such political party appoints one individual to serve as legal counsel.

Archived copy of the registration list

Under the bill, on the first day of each month, the Elections Commission must archive an electronic copy of the official registration list as it appeared for the previous month and retain that copy for no less than 22 months.

For further information see the 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) (e) of the statutes is amended to read:

1   5.05 **(2m)** (e) No individual who serves as an employee of the commission and

2   no individual who is retained by the commission to serve as a special investigator or

3   a special counsel may, while so employed or retained, make a contribution to a

4   candidate for state or local office. No individual who serves as an employee of the

5   commission, except for legal counsel, and no individual who is retained by the

6   commission to serve as a special investigator or as special counsel, for 12 months

7   prior to becoming so employed or retained, may have made a contribution to a

8   candidate for a partisan state or local office. In this paragraph, contribution has the

9   meaning given in s. 11.0101 (8).

10   **SECTION 2.** 5.05 (4) of the statutes is amended to read:

11   5.05 **(4)** EMPLOYEES. All employees of the commission shall be nonpartisan,

12   except that legal counsel shall be partisan and shall be appointed as provided under

13   this subsection. The legislative leadership of one of the 2 major political parties that

14   received the largest number of votes for president at the most recent presidential

15   election shall appoint one individual to serve as legal counsel and the legislative

16   leadership of the other such political party shall appoint one individual to serve as

17   legal counsel.

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

19   5.05 **(19)** FEDERAL ELECTION GUIDANCE. (a) In this subsection:

20   1. "Agency" has the meaning given in s. 13.172 (1).

21   2. "Federal election guidance" means any directive or guidance issued by the

22   federal department of justice or any other executive branch agency of the federal

23   government pertaining to elections, including the times, places, and manner for

24   administering elections in this state, received by an agency on or after the effective

25   date of this subdivision .... [LRB inserts date].

1   (b) An agency shall submit federal election guidance, and any communication

2   with the department of justice or federal department of justice or any other executive

3   branch agency of the federal government related to that guidance, to the senate

4   majority leader, the senate minority leader, the speaker of the assembly, the

5   assembly minority leader, the chairpersons of the standing committees with

6   jurisdiction concerning elections, and the cochairpersons of the joint committee for

7   review of administrative rules no later than 48 hours after receiving the guidance or

8   communication. No agency may take action to implement federal election guidance

9   without approval from the joint committee for review of administrative rules, except

10   that, if the committee does not schedule a meeting for the purpose of reviewing the

11   guidance within 30 days of receiving the guidance from the agency, the agency may

12   implement the guidance.

13   **SECTION 4.** 6.275 (1) (ab) of the statutes is created to read:

14   6.275 **(1)** (ab)   The total number of registered electors residing in the

15   municipality on the day of the primary or election.

16   **SECTION 5.** 6.275 (1) (db) of the statutes is created to read:

17   6.275 **(1)** (db) The total number of electors of the municipality residing in that

18   county who registered to vote beginning on the day of the immediately preceding

19   primary or election and ending on the day of the most recent primary or election.

20   **SECTION 6.** 6.275 (1) (eb) of the statutes is created to read:

21   6.275 **(1)** (eb) The total number of electors of the municipality voting absentee

22   ballots by mail at the primary or election.

23   **SECTION 7.** 6.275 (1) (ec) of the statutes is created to read:

24   6.275 **(1)** (ec) The total number of electors of the municipality voting absentee

25   ballots in person at the primary or election.

1   **SECTION 8.** 6.275 (1) (ed) of the statutes is created to read:

2   6.275 **(1)** (ed) The total number absentee ballots returned by electors residing

3   in the municipal at the primary or election that were not counted and the reasons

4   why such ballots were not counted.

5   **SECTION 9.** 6.275 (1) (ee) of the statutes is created to read:

6   6.275 **(1)** (ee) The total number of electors of the municipality casting ballots

7   at the polling place on the day of the primary or election.

8   **SECTION 10.** 6.275 (1) (ef) of the statutes is created to read:

9   6.275 **(1)** (ef)   The total number of electors of the municipality casting

10   provisional ballots under s. 6.97 at the primary or election and the number of such

11   ballots not counted, as provided under s. 6.97 (3) (c).

12   **SECTION 11.** 6.275 (1) (eg) of the statutes is created to read:

13   6.275 **(1)** (eg) The total number of defective ballots cast by electors of the

14   municipality that election officials recreated, with a separate itemization of such

15   ballots cast by military and oversea electors, damaged ballots, and ballots recreated

16   for other reasons.

17   **SECTION 12.** 6.275 (1) (eh) of the statutes is created to read:

18   6.275 **(1)** (eh) The location of each residential care facility and qualified

19   retirement home to which the municipality dispatched special voting deputies, as

20   provided under s. 6.875, and the total number of ballots cast by residents of the

21   facilities and homes using special voting deputies.

22   **SECTION 13.** 6.275 (1) (g) of the statutes is created to read:

23   6.275 **(1)** (g)   The number of electors residing in the municipality whose

24   personally identifiable information on the official registration list maintained by the

25   commission under s. 6.36 (1) and the information specified in s. 6.34 (2m) did not

1   match the personally identifiable information maintained by the department of

2   transportation beginning on the day of the immediately preceding primary or

3   election and ending on the day of the most recent primary or election; a description

4   of each mismatch; and the number of such electors whose registration status was

5   changed from eligible to ineligible.

6   SECTION 14. 6.275 (1m) of the statutes is created to read:

7   6.275 **(1m)** No later than 30 days after each election at which a state or national

8   office is filled or a statewide referendum is held, including any special election, each

9   county clerk or county board of election commissioners shall submit electronically a

10   report to the commission that provides the following:

11   (a) The approximate number of electors in each municipality in the county that

12   the municipal clerk certified to the clerk or board under s. 5.66 (1) for the election and

13   the number of ballots that the clerk or board ordered under s. 5.66 (1).

14   (b) The number of ballots ordered under par. (a) that the county or board

15   distributed to each municipality in the county.

16   (c) The number of ballots distributed to each municipality under par. (b) that

17   were ultimately cast in the election.

18   (d) The number of ballots distributed under par. (b) that election inspectors

19   rejected, and the reasons for rejection, and the number of ballots distributed under

20   par. (b) that were remade by election inspectors and cast.

21   (e) The number of ballots distributed under par. (b) that were not used in the

22   election.

23   (f) Any other action that the county performed under s. 7.60 to reconcile the

24   total number of ballots with the number of votes cast.

1   (g) An explanation of any discrepancy between the number of ballots ordered

2   and the number distributed and of any discrepancy between the number of ballots

3   distributed and the number cast or rejected.

4   SECTION 15. 6.275 (2) of the statutes is renumbered 6.275 (2) (a) and amended

5   to read:

6   6.275 **(2)** (a)   Upon receipt of each report filed under this section, the

7   commission shall, within 7 days of receiving the report, publish the information on

8   its Internet site in a format that is easily accessible to the public. The commission

9   shall update the information published under this subsection on a monthly basis.

10   SECTION 16. 6.275 (2) (b) of the statutes is created to read:

11   6.275 **(2)** (b) The commission shall, within 7 days after receiving a report under

12   sub. (1m), submit the report to the senate majority leader, the senate minority leader,

13   the speaker of the assembly, the assembly minority leader, the cochairpersons of the

14   standing committees with jurisdiction concerning elections, and the legislative audit

15   bureau. The legislative audit bureau shall review the report and, within 30 days

16   after receiving the report, shall submit a report to the legislature under s. 13.172 (2)

17   with its findings and recommendations, including a description of any discrepancies

18   it found and any explanation of those discrepancies it received from local election

19   officials.

20   SECTION 17. 6.36 (7) of the statutes is created to read:

21   6.36 **(7)**   On the first day of each month the commission shall archive an

22   electronic copy of the official registration list as it appeared on the last day of the

23   previous month and retain that copy for no less than 22 months.

24   SECTION 18. 16.54 (8s) of the statutes is created to read:

1   16.54 **(8s)** Before the governor may disburse funds received under sub. (1) to

2   the elections commission, the elections commission shall establish a plan for the

3   expenditure of such funds and submit the plan to the joint committee on finance. If

4   the cochairpersons of the joint committee on finance do not notify the elections

5   commission that the committee has scheduled a meeting for the purpose of reviewing

6   the plan within 14 working days after the date of the elections commission's

7   submittal, the elections commission may implement the plan and the governor may

8   disburse the funds to the elections commission. If, within 14 working days after the

9   date of the elections commission's submittal, the cochairpersons of the committee

10   notify the elections commission that the committee has scheduled a meeting for the

11   purpose of reviewing the the plan, the elections commission may implement the plan,

12   and the governor may disburse the funds, only with the approval of the committee.

13   **(END)**