



2021 SENATE BILL 943

February 3, 2022 - Introduced by Senators DARLING, NASS, FELZKOWSKI and STROEBEL, cosponsored by Representatives SPIROS, GUNDRUM, BEHNKE, STEFFEN, ARMSTRONG, SANFELIPPO, PENTERMAN, CABRAL-GUEVARA, TITTL, MURSAU, ROZAR, OLDENBURG, KNODL, MURPHY, WITTKE and NEYLON. Referred to Committee on Elections, Election Process Reform and Ethics.

- 1 **AN ACT to create** 5.05 (16) (d) of the statutes; **relating to:** requiring the Elections
2 Commission to send guidance documents to the Joint Committee for Review of
3 Administrative Rules.

Analysis by the Legislative Reference Bureau

This bill requires the Elections Commission to weekly submit to the Joint Committee for Review of Administrative Rules all documents and communications from the commission that the commission issued in the previous week that are applicable to municipal clerks generally and qualify as guidance documents. If JCRAR determines that such a document or communication satisfies the definition of a rule under current law, JCRAR must notify the commission of that determination and the commission must notify the municipal clerks that the document or communication is withdrawn and no longer applicable. Under this bill, the commission may promulgate the withdrawn document or communication as a rule, if necessary for preserving the public peace, health, safety, or welfare. For purposes of promulgating administrative rules, a “rule” is defined under current law as “a regulation, standard, statement of policy, or general order of general application that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency.”

The bill also requires the commission to provide a disclaimer with all guidance documents that it provides to municipal clerks providing the statutory definition of “guidance document” and indicating that guidance documents do not have the force

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of law. Under current law, “guidance document” means, generally, any formal or official document or communication issued by a state agency that explains the agency’s implementation of the current law that is enforced or administered by the agency or provides advice with respect to how a state agency is likely to apply the current law that is enforced or administered by the agency.

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

1 **SECTION 1.** 5.05 (16) (d) of the statutes is created to read:

2 5.05 (16) (d) 1. The commission shall weekly submit to the joint committee for
3 review of administrative rules all documents and communications from the
4 commission that the commission issued in the previous week that are applicable to
5 municipal clerks generally and qualify as guidance documents, as defined in s.
6 227.01 (3m). The commission shall submit the documents and communications to
7 the committee in the manner established by the committee. If the committee
8 determines that a document or communication it receives under this paragraph or
9 under 2021 Wisconsin Act ... (this act), section 2 (1), satisfies the definition of a rule
10 under s. 227.01 (13), the committee shall notify the commission of its determination
11 and the commission shall notify all municipal clerks to whom the document or
12 communication was provided of the committee’s determination and that the
13 document or communication is withdrawn and no longer applicable. The commission
14 may promulgate the withdrawn document or communication as a rule, if the
15 document or communication satisfies the requirement under s. 227.24 (1) (a).

16 2. All guidance documents that the commission provides to municipal clerks
17 shall include a disclaimer that provides the definition of “guidance document” under
18 s. 227.01 (3m) and indicates that a guidance document does not have the force of law.

19 **SECTION 2. Nonstatutory provisions.**

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1 (1) On the effective date of this subsection, the elections commission shall
2 submit to the joint committee for review of administrative rules all guidance
3 documents, as defined in s. 227.01 (3m), that the commission provided to municipal
4 clerks beginning on January 1, 2020, and ending on the effective date of this
5 subsection.

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(END)