

# State of Wisconsin



2021 Senate Bill 936

Date of enactment:  
Date of publication\*:

## 2021 WISCONSIN ACT

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

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

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

5.05 (2n) RESOLUTION OF COMPLAINTS. (a) Except as provided in par. (am), the commission shall resolve each complaint received by the commission no later than 60 days after receiving the complaint unless the members of the commission, by an affirmative vote of two-thirds of the members, approve extending the time for resolving the complaint by an additional period of 60 days. The commission may adopt more than one 60-day extension under this paragraph. During the 60-day period, and any extension of that period, the commission shall determine, by an affirmative vote of two-thirds of the members, whether to grant the relief, in whole or in part, requested by the complainant. If the commission fails to determine, by an affirmative vote of two-thirds of the members, to grant the relief, in whole or in part, requested by the complainant; refer the matter to the attorney general or district attorney, as provided under this section; or to extend the period for resolving the complaint, the commission shall dismiss the complaint.

(am) The commission shall resolve each complaint received by the commission under s. 5.06 no later than 60 days after receiving the complaint unless the members of the commission, by an affirmative vote of two-thirds of the members, approve extending the time for resolving the complaint by an additional period of 60 days. The commission may adopt more than one 60-day extension under this paragraph. During the 60-day period, and any extension of that period, the commission shall determine, by an affirmative vote of two-thirds of the members, whether to grant the relief, in whole or in part, requested by the complainant or to extend the time for resolving the complaint by an additional period of 60 days. If the commission fails to determine, by an affirmative vote of two-thirds of the members, to grant the relief, in whole or in part, requested by the complainant or to extend the period for resolving the complaint, the commission shall dismiss the complaint.

(b) A person who alleges that an action of the commission violated or resulted in the violation of the laws under chs. 5 to 10 or 12 may file a sworn complaint and commence suit in the circuit court for any county where

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\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

the alleged violation occurred without first filing the complaint with the commission.

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

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

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

**5.05 (5s) (an)** No later than 30 days following the resolution of each complaint filed with the commission under sub. (2m) (c) or s. 5.06 or 5.061, the commission shall provide a copy of the full text of the complaint, with all personally identifiable information, as defined in s. 19.62 (5), redacted, and 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 assembly and senate standing committees with jurisdiction over elections. The commission shall redact all names of individuals from all copies of complaints and documentation provided under this paragraph.

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

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

1. The number of complaints filed with the commission in the previous year under sub. (2m) (c) and ss. 5.06 and 5.061, 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, including reports received via the toll-free hotline maintained under sub. (13), of possible violations of election laws, including violations of election laws or other misconduct alleged to have been committed by election officials, that the commission received the previous year. The report shall include a description of each general category of concerns reported to the commission and an explanation of each such category.

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

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

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

**5.05 (20) RULES REGARDING REPORTS OF ELECTION RELATED CONCERNS.** The commission shall promulgate rules establishing procedures for the commission's consideration and handling of all 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, that the commission receives, including reports received via the toll-free hotline maintained under sub. (13).

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

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

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

**7.08 (6) (a) 1.** Electronic voting system equipment used in at least 4 reporting units in the city of Milwaukee, at least 4 reporting units in the city of Madison, at least one reporting unit in each of the 20 other largest municipalities, 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 this state.

3. At least 5 reporting units that used each type of electronic voting system approved under s. 5.91.

(b) The commission shall promulgate rules that do all of the following:

1. Establish an error rate for purposes of par. (a).

2. Establish a process for audits under this subsection that provides for a random selection of reporting units and that, except with respect to audits conducted in the municipalities specified in par. (a) 1., ensures reporting units are selected for audit from geographic areas throughout this state. The process shall provide that if the commission randomly selects a reporting unit for audit with fewer than 10 ballots cast, the commission shall randomly select another reporting unit for audit in that municipality until the commission selects a reporting unit with at least 10 ballots cast. Additionally, the process

shall provide that the county clerk shall oversee the counting of ballots by hand in connection with the audits as a part of the county canvass under s. 7.60.

**SECTION 8.** 9.01 (1) (b) 13. of the statutes is created to read:

9.01 (1) (b) 13. The municipal clerk shall print and make available for each recount paper copies of all absentee ballot applications received electronically by the municipal clerk for the election.

**SECTION 9.** 13.94 (1) (w) of the statutes is created to read:

13.94 (1) (w) Analyse the results of audits conducted under s. 7.08 (6). No later than the January 15 following each general election, the bureau shall submit a report to the legislature under s. 13.172 (2) with its recommendations for improving the audit process under s. 7.08 (6) and for improving the accuracy of voting systems, if it determines that improvements are needed.