

## The Vetoed Bills

### Undermining the Wisconsin Elections Commission and Empowering the Legislature to Oversee Election Administration: Senate Bills 213, 936, 941, 942, and 943

Most of the bills that passed the legislature share a common theme: they aim to undermine the authority of the Wisconsin Elections Commission and give the legislature itself more authority to oversee elections. The WEC is a bipartisan body that Republican lawmakers created only six years ago. It is designed to be made up of election law experts, and it is uniquely positioned to evaluate the merits of election-related complaints and advise election officials statewide on how best to follow election laws. The following bills are consistent with calls from some state Republicans to dismantle or weaken the WEC, often with no clear plan for how to fill the vacuum this would leave in Wisconsin election administration. Moves like this would open the door to crippling uncertainty for election officials around the state, or partisan gamesmanship from the legislature in handling election issues.

Under **Senate Bill 213**, people wishing to challenge an election official's action or inaction under Wisconsin election law could have immediately sued the official in state court, instead of first asking for review at the Wisconsin Election Commission (WEC). This would undermine and diminish the WEC's authority, while subjecting election officials to the threat of expensive and time-consuming litigation in court.

**Senate Bill 936** was an omnibus bill that would have made sweeping changes, disempowering the WEC and requiring unnecessary reviews of election equipment and processes. The bill would have imposed strict reporting requirements on the WEC, giving the legislature increased oversight of the commission, and allowed people to sue the WEC directly in state court for alleged violations of election laws (rather than first complaining to the WEC). The bill would also have required unnecessary performance audits of electronic voting systems statewide.

**Senate Bill 941** would have given the legislature a direct role in implementing federal election administrative guidance, directives, and funds. Wisconsin government agencies that received any guidance from the federal government about how to run elections would have to give that guidance to legislative leaders within 48 hours, and would not have been permitted to act on the guidance until the Joint Committee of Administrative Rules either approved or disapproved it, a process that could take up to 30 days. The bill would also have required local election officials to electronically report detailed information about every single election to the WEC, which would then be required to relay the information to legislative leaders and publish it online. Finally, WEC would have been required to retain a Republican and a Democratic lawyer as counsel.

**Senate Bill 942** would have required the WEC to track all voter registration list maintenance data sharing with other state agencies and report any failures to the Joint Committee on Finance and the Secretary of Administration annually. The Secretary would have evaluated the data and

decided whether to maintain the agencies' funding or punish them by eliminating the funding for one or more staff members. The statute did not establish the standards by which the Secretary would have made these decisions, setting the stage for politically motivated retaliation.

**Senate Bill 943** would have given the Legislature's Joint Committee for Review of Administrative Rules the authority to review all of the WEC's guidance documents before they are implemented. If the Committee determined the guidance should actually be considered rules, the guidance would be withdrawn and the WEC would have to formally promulgate the rules. This bill disrespects the role of administrative agencies and sets the stage for gridlock. The WEC is an expert body uniquely situated to offer guidance on election procedures. The legislature is a partisan body of generalists, whose members' job is to make laws, not supervise the implementation of Wisconsin's many statutes in detail. Joint Committee members would have strong incentives to reject any guidance with which they disagree for political reasons, preventing the WEC from doing its job and resolving confusion among local election officials.

#### **Banning common-sense ballot-curing and private funding to run elections: Senate Bill 935**

**Senate Bill 935** would have made numerous harmful changes to election administration. For one, it would have banned election officials from correcting inconsequential errors on absentee ballot certificates, with the likely result of disqualifying some absentee ballots. Under the bill, absentee ballot certificates would have 12 separate fields to fill in the voter's and witness's name and address, and clerks would be required to reject the ballot if any field was left blank. For example, if a voter or witness included their zip code, but not their municipality, or vice versa, the ballot would have to be rejected. Correcting such an error would become a misdemeanor offense. Under current Wisconsin law, clerks must reject ballots with an incomplete address, but 2016 guidance from the WEC clarified that clerks may correct certain minor errors relating to witnesses' addresses, in order to count otherwise valid ballots.

This bill would also have banned government officials from seeking or accepting private resources to help administer elections. Private grants made the 2020 elections possible. Municipalities scrambled to provide personal protective equipment to staff and create a safe voting environment during the pandemic, with insufficient government funding. If Senate Bill 935 had been in effect, it is impossible to say if and who the elections could have taken place. Senate Bill 935 did not include any provisions that would ensure adequate public funding for future elections.

Finally, SB 935 would have made several harmful changes to the rules governing Special Voting Deputies, who help residents of long-term care facilities cast their ballots. For example, right now facilities must, upon request of residents' family members, tell the family members when SVDs will be in the facility. The bill would have required facilities to automatically notify family members of the dates of SVD visits. This requirement is patronizing to the resident voters and

could lead to interference with their right to vote. The bill would also have made it illegal for facilities to deny SVDs entry unless there is a declared public health emergency, a rule that could have unintended consequences: facilities might not feel confident excluding an SVD even if the SVD were the subject of a TRO, otherwise known to be dangerous, or if the facility was experiencing an emergency. And the bill would also have barred SVDs from assisting residents with voting except in very specific circumstances, contrary to existing recommendations from the federal government—the Department of Health and Human Services says that long-term care facility staff may be required to help residents exercise their right to vote.

### **Senate Joint Resolutions on Election Funding**

In addition to the bills described above, this past session the legislature passed two Senate Joint Resolutions to amend the state constitution to limit the funding available to local election officials. If these Resolutions are passed by the legislature again in the next session, they will become ballot initiatives for the voters to decide. Although bans on private funding may sound innocuous, they have the potential to disrupt future elections. It is important to remember that election officials must always follow state and federal election laws, whether they are using resources they received from federal or state governments, or private funders or donors. Election administration is chronically underfunded, and prohibiting officials from accepting private grants to fill in the gaps will only make the problem worse.

**Senate Joint Resolution 85** seeks to create a new section of the state constitution addressing how to spend funds that Wisconsin receives from the federal government. The amendment would state that the legislature has sole power to determine how money from the federal government is distributed in Wisconsin, and the governor cannot allocate any federal funds he or she accepts without legislative approval. This amendment would have far-reaching consequences, including preventing the governor from distributing federal funds designated for election administration.

**Senate Joint Resolution 101** seeks to amend the constitution to prevent state and local government employees from applying for or accepting private funding to help run elections. The amendment would also specify that nobody except an election official designated by law may perform any election-related tasks. The private funding ban, in particular, appears to be a reaction to conspiracy theories about the private grants that municipalities around the state received from the Center for Tech and Civic Life to help administer elections in 2020 during the height of the pandemic, when election officials needed new special protective gear for their staff, hazard pay, and the ability to meet an unprecedented demand for absentee ballots.

Neither joint resolution includes a commitment for the state to adequately fund elections.

**Another 28 subversive bills were introduced in the State Assembly or Senate but did not pass. You can read about them at the Voting Rights Lab Legislation Tracker.**