

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Elections Commission

Special Meeting

Wednesday, March 20, 2024

9:00 A.M.

This meeting is being held via video teleconference only. Members of the public and media may attend online or by telephone. Please visit <https://elections.wi.gov/event/special-meeting-3202024> to view materials for the meeting. All public participants' phones/microphones will be muted during the meeting. Members of the public wishing to communicate to the Commissioners should email electioncomments@wi.gov with "Message to Commissioners" in the subject line.

Zoom information for the meeting:

When: Mar 20, 2024, 09:00 AM Central Time (US and Canada)

Topic: Meeting of the Wisconsin Elections Commission

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NOTICE OF OPEN AND CLOSED MEETING

OPEN AND CLOSED SESSION AGENDA

- A. Call to Order**
- B. Administrator’s Report of Appropriate Meeting Notice**
- C. Approval of Previous Meeting Minutes**
 - 1. February 8, 2024** **1**
 - 2. March 12, 2024** **19**
- D. Discussion and Possible Action Pertaining to Uniform Instructions for Absentee Voters (Particularly UOCAVA Voters who Receive a Ballot by Mail).** **22**
- E. Review and Possible Action on Proposed Agency Administrative Rule: Uniform Instructions Rule (Wis. Admin. Code Chapter EL 6).** **26**
- F. Review and Possible Action on Proposed Agency Administrative Rule and Public Notices: Election Observer Rule and Associated Economic Impact Analysis (Wis. Admin. Code Chapter EL 4)** **32**
- G. Discussion, Review, and Possible Action Pertaining to the Recount Procedures Manual for County/Municipal Clerks.** **58**
- H. Closed Session***
 - 1. Approval of Previous Meeting Minutes**
 - February 8, 2024**
 - March 12, 2024**
 - 2. Litigation Update and Consideration of Potential Litigation**
 - 3. Wis. Stat. § 5.05 Complaints**

§ 19.85(1)(g) – The Commission may confer in closed session with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

NOTICE OF OPEN AND CLOSED MEETING

§ 19.851 – The Commission’s deliberations concerning an investigation of any violation of the law under the jurisdiction of the Commission shall be in closed session.

I. Adjourn



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

Wisconsin Elections Commission

First Quarterly Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
10:00 a.m. February 8, 2024

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Carrie Riepl, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Angela Sharpe, Jacob Walters, Regina Hein, John Smalley, Riley Willman, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Don Millis called the meeting to order at 10:02 a.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Public Comment

Chair Millis then opened the floor for public comment, for which there were two speakers registered.

Appearing first was Sam Liebert, Wisconsin State Director for All Voting Is Local.

Mr. Liebert called for Commissioner Spindell to resign.

Commissioners Thomsen and Spindell followed with comments.

Appearing next was Nicholas Ramos, Executive Director of the Wisconsin Democracy Campaign.

Mr. Ramos asked for Commissioner Spindell resignation.

Commissioner Spindell followed with comments.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

D. Written Comments

Chair Millis noted that the Commission also received written comments on a variety of issues from the League of Women Voters, Disability Rights Wisconsin, Common Cause in Wisconsin, the National Federation of the Blind, and America Votes.

Chair Millis also commended the staff for the absentee ballot envelope redesign, pointing out the bipartisan approval it received at an Assembly Committee on Campaigns and Elections hearing the day before.

E. Approval of Previous Meeting Minutes

Chair Millis asked if there was any discussion from Commissioners, or if someone wished to make a motion to approve the open session minutes for the Commission’s January 24, 2024, meeting.

MOTION: To approve the Wisconsin Election Commission’s open session minutes as drafted for its January 24, 2024, meeting.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote on the motion to approve the January 24, 2024, minutes:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

F. Review, Possible Approval, and Commission Directives as Needed for the Agency’s Internal Control Plan

Sharrie Hauge, Chief Administrative Officer for the Wisconsin Elections Commission, appeared and presented to the Commission the agency’s 2024 Internal Control Plan. She stated that statute requires the agency to review its Internal Control Plan annually and that, upon this review, no major control deficiencies or material weaknesses were found. She then pointed to where this plan is in the Commissioners’ meeting materials, asked if they had any questions, and drew their attention to the recommended motion from WEC staff.

Discussion.

MOTION: To approve the WEC 2024 Internal Control Plan and authorize staff to submit the Plan to the Chief Clerks of the Senate and Assembly for distribution to the appropriate standing committees and to the State Controller’s Office.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote on the motion to approve the WEC’s 2024 Internal Control Plan:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

Chair Millis forecasted with those in attendance roughly when the Commission will be breaking for closed session.

G. Review and Possible Action on Agency Administrative Rules¹

1. LAB Rule Memo Discussion

Staff Attorney Brandon Hunzicker reviewed the status and deadlines of LAB recommended administrative rules. He clarified that the observer rule was at the economic impact analysis stage, which needed to be undertaken before the Commission could send the final rule to the Legislature.

Attorney Hunzicker solicited feedback from the Commissioners on the following draft rules:

3. Training Rule (Chapter EL 13)

Attorney Hunzicker provided a summary of the existing draft language for 13.01 and 13.02(1) and (2). He noted that references to chief inspectors should be removed from 13.01, as a separate statute s. 7.31 addresses chief inspector training. He clarified that the municipal clerks may utilize the Commission or another election official who uses Commission materials to provide training, and suggested removing the language starting with, “and the training team...” in 13.02(2).

Chair Millis suggested that 13.02(2) read, “The municipal clerk may utilize the Commission or another election official who utilizes materials provided by the Commission to provide training. If the municipal clerk opts not to use the Commission’s provided training, the clerk shall submit the training materials to the Commission’s training team for review and approval no less than seven calendar days prior to the proposed training. If no materials exist, the municipal clerk must provide an agenda or detailed summary for the proposed training. The Commission’s training team may require revisions to the materials if errors, concerns, or inaccuracies exist. Training using other materials other than those provided by the Commission may not commence until approval is received from the Commission’s training team.” The language starting with, “and the training team...” will be struck.

Commissioner Jacobs suggested that the first line of 13.02(2) read, “The municipal clerk may utilize the Commission or another election official who uses the Commission materials or who has received approval as described in this section for training materials.”

Commissioner Jacobs suggested changing “seven days” to either two business weeks or ten business days. Chair Millis agreed that was reasonable.

Attorney Hunzicker provided a summary of the edits to the existing draft language for the remainder of 13.02, 13.05, and 13.10. He suggested deleting 13.05(1) and 13.10(1), and instead that 13.05(2) and 13.10(2) should say, “The content and curriculum of the training shall include:”

¹ This section may be clarified prior to the March 20, 2024, Commission meeting.

Chair Millis suggested 13.05(1) and 13.10(1) be kept and say, “The content and curriculum of the training required of election inspectors shall be prescribed by the Commission as described in (2).” Chair Jacobs suggested moving 13.05(1) and 13.10(1) into 13.02 and saying, “The content and curriculum of the training required of election inspectors and special voting deputies shall be prescribed by the Commission under 13.05 and 13.10.” She expressed approval of the checklist format of 13.05 and 13.10.”

Attorney Hunzicker noted that 13.05(2)(a) should say, “equipment vendors of approved election equipment” rather than “equipment vendors.” “The Commission hereby acknowledges that” should be deleted in 13.05(2)(a), 13.05(2)(j), and 13.10(2)(h). He further noted that the list should include outside subject matter experts and law enforcement.

Chair Millis agreed with this and suggested, in 13.05(2)(a), “Training may also be provided by...” rather than “Some of this training may also be provided by...”

Attorney Hunzicker noted that 13.05(2)(t) and 13.10(2)(l) should be their own subsection (3) clarifying that municipal clerks can provide any other materials provided by the Commission. He reiterated the note about chief inspectors as it pertained to 13.15.

Commissioner Jacobs suggested that 13.15 include chief inspectors and reference s. 7.31 for their requirements. Commissioner Spindell agreed with this.

MOTION: Staff is directed to make revisions consistent with today’s discussion and return to the Commission with an updated version.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote on the motion for staff to make revisions consistent with the day’s discussion:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

5. Emergency Polling Place Plan (Chapter EL 15)

Attorney Hunzicker reviewed the relevant statutes and deadlines for EL 15 and clarified the rulemaking process.

Discussion.

Attorney Hunzicker provided a summary of the existing draft language for 15.01 and asked the Commission whether “Impossible” and “Inconvenient” should be defined, either separately or as one unit, or left to local discretion.

Commissioner Spindell expressed a preference for defining the terms.

Commissioner Jacobs recommended defining “Impossible” as, “a threat to the safety of voters, persons present at the polling site, and persons traveling to and from the polling site on Election Day, or the ability to cast votes” and indicated that similar changes should be made to the definition of “Inconvenient.” She suggested that the rule instruct clerks to designate an alternate polling place, and if that site is also unavailable, instruct clerks on how to proceed. Chair Millis agreed that this made sense. Attorney Hunzicker asked whether the Commission would like 15.02(1) to be redrafted more along the lines of 15.02(2) in terms of discretion of what the substitute polling place plan shall contain, and suggested keeping the content of 15.02(1) but replacing “shall” with “may.”

Commissioner Jacobs clarified that establishing an alternate polling place should not be linked to having an emergency plan in an administrative rule.

Commissioner Spindell suggested the convening authority council approve emergency plans. Chair Millis suggested requiring clerks to have emergency plans that could include alternate polling places and require alternate polling places for various contingencies to be approved by the governing body.

Attorney Hunzicker affirmed there should be a requirement to approve alternate polling places, and asked if the emergency plan should be included in the rule at all. He suggested that the emergency plan could instead be communicated to clerks as guidance.

Chair Millis and Commissioner Jacobs expressed that the requirements for the emergency plan would discourage clerks from designating alternate polling places. Commissioner Jacobs suggested that the plan be focused on pollsite relocation and that the rule reference 7.37 and instruct clerks how to designate alternate polling places. She reiterated that the rule should also address a situation in which the alternate polling place is not available.

Administrator Wolfe noted that the Commission already provides municipalities with a template emergency response plan.

Attorney Hunzicker confirmed that the Commission preferred that the rule be redrafted into a shorter document that requires approval of alternate polling places but does not require an emergency polling place relocation plan by rule. He clarified that the rule could state it does not supersede the ability of election inspectors under s. 7.37 to adjourn to any location if necessary.

Commissioner Jacobs suggested a paragraph stating that nothing in the rule alters the rights of election inspectors pursuant to s. 7.37(1) to move pollsites if it becomes impossible or inconvenient to hold an election at the designated location.

Attorney Hunzicker confirmed he would reevaluate how to draft the rule to reflect that. Commissioner Spindell reiterated that the convening authority approve emergency plans.

MOTION: Staff is directed to make revisions consistent with today’s discussion and return to the Commission with an updated version.

Moved by Commissioner Thomsen. Seconded by Commissioner Riepl.

Roll call vote on the motion for staff to make revisions consistent with the day’s discussion:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

2. Uniform Instructions (Chapter EL 6)

Staff Attorney Angela Sharpe reviewed timelines and background information for the emergency and permanent rules regarding uniform instructions.

Commissioner Jacobs suggested “uniform instructions” be defined in the rule as, “Those instructions approved by the Commission pursuant to s. 6.869.” The rule would then be, “The municipality is not permitted to provide absentee electors with any instructions on completion of absentee ballots other than the uniform instructions set forth by the Commission, or to represent...”

Attorney Sharpe suggested including the form number for the uniform instructions in the rule. Commissioner Jacobs agreed as long as staff was certain the form number would not change. Commissioner Jacobs suggested 6.05 (2)(a) read, “... ability to provide administrative or logistical instructions to absentee electors in addition to the uniform instructions...” Chair Millis and Commissioner Jacobs suggested a similar addition be made to (2)(c): “If a municipality elects to provide administrative or logistical instructions pursuant to 6.05(2)(a) in addition to the uniform instructions...” Commissioner Jacobs confirmed that the rule would then define uniform instructions, affirmatively prescribes the uniform instructions to all absentee ballot holders, and contain clarified exceptions stating that administrative or logistical instructions could be provided in addition to the uniform instructions.

MOTION: The Wisconsin Elections Commission directs staff to implement edits to the proposed rulemaking draft for SS 093-23 and SS 094-23 for emergency and permanent rulemaking relating to the mandatory use of uniform instructions for absentee voting consistent with the discussion during the meeting, and to bring back a revised version of the rulemaking draft for Commission review and approval at an upcoming meeting.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote on the motion for staff to make revisions consistent with the day’s discussion:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

N. Closed Session

This agenda item was taken out of order.

Chair Millis asked if there was a motion to go into closed session.

MOTION: To go into closed session pursuant to Wis. Stats. §§ 19.85(1)(g) and 19.851.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

Roll call vote on the motion to go into closed session:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

At noon the Commission recessed for 15 minutes, reconvening in closed session at approximately 12:15 p.m.

G. Review and Possible Action on Agency Administrative Rules (continued)

The Commission reconvened in open session at 3:48 p.m.

4. Challenge Procedures for Nomination Papers and Declarations of Candidacy (Chapter EL 2)

Attorney Sharpe reviewed timelines and background information for the emergency and permanent rules regarding nomination paper and declaration of candidacy challenge procedures and provided an overview of the Commission's materials concerning the agenda item.

Commissioner Thomsen suggested that "clear and convincing" and "substantial compliance" be defined based on case law utilized in Wisconsin rather than Black's Law Dictionary. In regard to 2.07(3)(b) he noted that clear and convincing evidence is a middle burden of proof and suggested consistency with the general rules of evidence. Chair Millis agreed.

Commissioner Thomsen suggested removing "Along with a copy of the complaint, the filing officer shall also provide the candidate with notification of the response deadline, as well as notice that the procedures governing nomination paper challenges are covered by this chapter" from 2.07(2)(a). He indicated he would be fine with permitting staff to notify candidates as a courtesy: "If requested, the filing officer can aid..."

Commissioner Jacobs suggested adding Milwaukee County and the Milwaukee Election Commission to the definition of filing officer. Attorney Sharpe clarified that "board of elections commissioners" includes the County and City of Milwaukee and any jurisdictions that may cross that threshold in the future. Chair Millis suggested referencing the relevant statute.

Commissioner Spindell suggested clarifying "digital transmissions" in 2.05(3)(b) to specify that emailed copies are unacceptable. Attorney Sharpe noted the language could mirror EL 6.04. Commissioner Jacobs suggested adding the sentence, "Providing copies of documents or providing documents in digital form is not compliant," after the sentence starting, "Physical possession means the original documents..." Chair Millis suggested listing, "Copies, facsimile, email, or other digital transmissions." Commissioner Thomsen suggested clarifying that the originals must be with the filing officer and no others will be accepted. Attorney Sharpe clarified that the Commission had come to a consensus stating that the original documents must have been received and no other formats are acceptable.

Commissioner Jacobs suggested that nomination papers “may” be numbered under 2.05(3)(b), rather than “shall.” Chair Millis indicated he was comfortable striking the last two sentences of 2.05(3)(b). Commissioner Jacobs suggested the “shall” be changed to “should,” keeping the second sentence. Commissioner Spindell agreed. Chair Millis suggested the last sentence should be: “Noncompliance of the prior sentence does not prevent the Commission from accepting the pages or invalidating signatures on a page that is not numbered.” Attorney Sharpe confirmed consensus concerning the two previous suggestions.

Commissioner Spindell suggested that “facial review” be replaced with “facial sufficiency” in 2.05(4)(a). Commissioner Thomsen and Commissioner Jacobs disagreed. Chair Millis proposed codifying a practice from the State Elections Board where if Board staff reviewed a candidate’s proposed nomination paper form and felt it was correct, the nomination papers would be insulated from challenges. Commissioner Spindell agreed. Commissioner Jacobs, Commissioner Thomsen, and Commissioner Bostelmann disagreed and indicated it would be more appropriate as a courtesy. Chair Millis suggested that “Central Time” be written out in 2.05(4)(b). Commissioner Jacobs and Commissioner Spindell agreed.

Commissioner Jacobs suggested the deadline outlined 2.05(4)(b) should be either three calendar days or subject to s. 990.001(4). Attorney Sharpe explained that the rule was written that way to account for special election filing periods where the deadline might fall on a weekend. Commissioner Jacobs suggested, rather than including both terms, include: “If the deadline falls on a Saturday, Sunday, or holiday, correcting affidavits must be submitted by fax or email.” Additionally, she suggested clarifying that correcting affidavits may be submitted electronically. Chair Millis confirmed consensus. Commissioner Spindell suggested that the struck sentence, “The death of a signer after a nomination paper has been signed does not invalidate the signature,” be included in the draft rule in 2.05(4)(d). Chair Millis and Commissioner Bostelmann agreed. Attorney Sharpe confirmed a consensus to keep the sentence.

Commissioner Jacobs suggested adding “nomination paper” to the first sentence of 2.05(4)(d), now reading: “After a nomination paper has been filed, no signature may be added or removed, but a nomination paper may be amended through a valid correcting affidavit.”

Commissioner Jacobs questioned, with respect to 2.05(5)(c), how anyone would know whether an elector signed their own name or not. She admitted it might be a bit of an “angels-on-a-pinhead” question, but nevertheless wondered what that challenge might look like.

Chair Millis spoke to another instance where this might arise, like in a case where the signature of the elector is very similar to the circulator’s. The defense to which, he said, would be the circulator saying, “well, the person was disabled.” He did note that someone might challenge that saying, “No, they’re not.”

Commissioner Jacobs questioned whether 2.05(5)(e) was necessary, and Chair Millis added that he’d be fine with removing that provision in the updated administrative rules.

No Commissioners disagreed.

Commissioner Jacobs expressed a desire to clean up the language in 2.05(5)(f). She felt that it should be broken up into two distinct sections. One stating, in essence, “Only one signature per person for the

same office is valid, subject to paragraph two below.” Paragraph two would then read, “Where an elector is entitled to vote for more than one candidate for the same office, a person may sign the nomination papers of as many candidates for the same office as the person is entitled to vote for at the election.”

Commissioner Jacobs was hesitant to use the word “complete” in 2.05(5)(g), pointing out the abundance of litigation on what constitutes a “complete” address.

Attorney Sharpe cited the address information that must be provided in Wis. Stat. § 8.10(4)(b), noting that it includes street name and house number.

Chair Millis said he’d be fine with removing the word “complete” and adding “including the street name and number.”

No Commissioners disagreed.

Commissioner Jacobs expressed concern with the use of the word “elector” throughout this section, because an “elector” is someone who is voting, however, to sign a nomination paper you just need to be an eligible elector. She suggested explicitly defining “signer” and “circulator” as that would cover all parties involved.

Attorney Sharpe said she would flag this as something for the Commission to discuss further when this administrative rule draft comes back for review.

Commissioner Jacobs asked what “residency of the circulator” means in 2.05(5)(i). Chair Millis considered what’s necessary to know regarding “the residency of the circulator.”

Attorney Sharpe noted that she’d flag this for the Commission to come back to, and also pointed out the statute that outlines what residency information must be provided by the circulator. Chair Millis added that residency typically includes the state. Commissioner Jacobs pointed out that that the statute they just reviewed did not have that.

Commissioner Spindell questioned if, say, a circulator forgets to include their state on one nomination paper, would it be permissible for that information to be obtained from the other nomination paper pages. He felt that it should. Chair Millis agreed.

Commissioner Jacobs was uncertain as to what the language, “The missing date need not be bracketed by correct and complete dates on either side of it to be substantially compliant,” in 2.05(5)(j)(1) means. Attorney Sharpe clarified that this comes from the WEC’s Common Nomination Paper Challenges Manual, which states that if a nomination paper signature is missing a date, but the signatures above and below that signature have dates, then it can be inferred that this person must have signed within that timeframe. She further clarified that this would change that practice so that if the date of signature can be reasonably inferred by other information on the page, not just the signature dates above and below it, that that signature should be counted.

Commissioners Millis and Jacobs felt that the current language as drafted in 2.05(5)(j)(1) does not say that, and Attorney Sharpe noted that this is another item she’ll flag for further review by the Commission.

Commissioner Jacobs was uncertain as to what "...or other missing information..." means in 2.05(5)(j)(3)(A). She also added that "apartment number" is not required in statute. She felt that if we're saying that an address shall still be considered valid even if it's missing the apartment number, then we should just say that.

Commissioner Jacobs suggested that 2.05(5)(j)(3)(B) be simplified to something like, "If the elector has abbreviated the name of their municipality, the address is substantially compliant as long as the municipality can be determined."

Commissioner Jacobs also felt that a 2.05(5)(j)(3)(C) would be warranted as well to address nicknames.

Commissioner Jacobs suggested that 2.05(5)(j)(4) be rephrased to say, "No person under the age of 18 may sign nomination papers regardless of their age on the date of the election."

Commissioner Jacobs suggested that the first sentence of 2.05(5)(j)(7) read, "If the filing officer cannot discern the signers name after reviewing both the signature and printed name it should be deemed illegible and not counted." She also suggested that the second sentence read, "The filing officer is not required to consult extrinsic sources of information to attempt to determine the signer's name, but may do so at his or her discretion if it assists in determining the name."

Attorney Sharpe drew attention to guidance in our manuals that distinguishes between determining the whole name versus part of the name, or a name that's partially legible, and Commissioner Jacobs discussed what that might look like in practice.

Commissioner Thomsen clarified with the Commission that what we're trying to say is, in essence, if you're having trouble discerning the name, and with the help of extrinsic evidence it can be determined, then you can count that signature. Administrator Wolfe spoke to the standard that WEC staff currently use as to what constitutes a name.

Commissioner Jacobs felt that the language 2.05(6)(c) was somewhat contradictory in that it requires candidates to list both their residential and mailing address, but then goes on to say that if it's not listed they'll be assumed to be the same. Commissioner Thomsen felt that we should base this requirement off of what's in statute. Commissioner Riepl pointed out that currently under candidate's mailing address on the nomination paper form it states, "required if different than residential address or voting municipality." Commissioner Spindell echoed that right now they're not required to list a mailing address, and Commissioner Jacobs said that's not in line with statute, but that a checkbox could be added to say, "mailing address same as residential address." Commissioner Spindell added that would be something easy to check.

Attorney Sharpe pointed to what the Commission's guidance currently is in its manual on reviewing nomination paper signatures. Chair Millis felt that the last sentence of 2.05(6)(c) makes sense as an instruction to a filing officer. Commissioner Thomsen agreed with that interpretation. Attorney Sharpe reformulated that last sentence and read it back to the Commission. "Absent evidence to the contrary, the filing officer may presume that a candidate's mailing address and voting municipality are the same as the residential address." Chair Millis agreed.

Commissioner Jacobs disagreed, pointing out that statute requires a mailing address. Commissioner Spindell highlighted that residential addresses and mailing addresses are going to be the same for 95% of people. Commissioner Jacobs agreed, but also said that higher profile candidates are going to have

campaign headquarters and such. Commissioner Riepl noted that a municipality for voting purposes and a municipality listed on a mailing address might differ. Commissioner Jacobs agreed and stated this is why the statute requires this.

Chair Millis added that if we go with this change, then we need to change our nomination paper form. Commissioner Thomsen felt that it would be imprudent to change our nomination paper form at this point in time as we head into the 2024 election season. Commissioner Jacobs appreciated that, but said this needs to be based on statute. Commissioner Thomsen agreed, but felt like now was not the time to make these changes.

Commissioner Jacobs went on to say she's fine with a nomination paper form that says, "If left blank, then the same." She reiterated that we should be basing our administrative rules on what's in statute.

Chair Millis disagreed in that he reads the statute to require listing the residential municipality if different from the mailing municipality, but not that they both need to be listed twice if the same. Commissioner Jacobs didn't disagree, but felt that the candidate should be required to mark "same."

Commissioner Spindell noted that even if someone listed someone's actual municipality on a piece of mail, i.e. the municipality to which they pay taxes, as opposed to the municipality that's typically listed for their mailing address, it would likely still be delivered to the addressed person.

Chair Millis echoed Commissioner Thomsen's sentiments that now is not the right time to change the WEC's nomination paper form, but was open to exploring this at a later time. Commissioner Jacobs felt that we should then take out the part of presuming them to be the same and let candidates argue substantial compliance. Chair Millis and Commissioner Thomsen did not express any issues with that.

Commissioner Jacobs asked if we should include in 2.05(7)(b) that such errors may be fixed with a correcting affidavit. Chair Millis asked Attorney Sharpe if correcting affidavits are mentioned elsewhere in the administrative rules, and Attorney Sharpe mentioned that a cross reference could be included to those other sections where correcting affidavits are mentioned. Chair Millis and Commissioner Jacobs were amenable to that, though Chair Millis expressed a desire to have anything that's correctable with a correcting affidavit referenced as such in the administrative rules. He asked that Attorney Sharpe flag this for the Commission's further review.

On nomination paper challenges, Commissioner Jacobs felt that the rules as drafted don't address the biggest issues. One of those being the lack of protocol for how a challenger may reply to a candidate's response to their challenge. Commissioner Thomsen agreed.

The other big issue she felt wasn't addressed was that it's required of the challenger to present clear and convincing evidence, but that there's no such standard for the candidate's response to that challenge. She felt that the candidate's response should have that same burden of presenting "clear and convincing" evidence.

Chair Millis asked Administrator Wolfe as to the feasibility of building in a challenger-reply process, given that the deadlines associated with nomination paper challenges are tight already. She indicated that would not be realistic. Commissioner Jacobs acknowledged the tight deadlines that staff already work within, but still felt like a challenger-reply process should be built in. She added that staff should not be expected to include a challenger's reply in the materials they provide Commissioners.

Commissioner Spindell added that working over the weekends might help alleviate the tightness associated with the deadlines. Commissioner Jacobs commented that we could require these replies to be electronic.

Chair Millis asked Administrator Wolfe what the latest is we can expect to receive candidate responses to challenges, which she said was 5:00 p.m. the day before the ballot access meeting.

Commissioners and WEC staff discussed the specifics of candidate filing deadlines, challenge filing deadlines, and the logistics of incorporating a challenger-reply process to candidate's responses to challenges.

Commissioner Thomsen felt like we ought to just say the Commission will accept replies to challenged candidate's responses. Commissioner Spindell suggested the deadline be 11:59 p.m. the day before the ballot access meeting. Commissioner Spindell and Administrator Wolfe discussed the statutory basis for when the ballot access meeting must be.

Commissioner Thomsen did not feel like a midnight deadline would be appropriate. He reiterated that we should just say we'll accept responses from challengers to candidate replies. Chair Millis did not disagree, but noted that the more time you give someone to read something the more likely they are to read it.

Commissioner Jacobs suggested that we just need to find a place to put in the administrative code that "the challenger may submit a brief in reply to the candidate's response." Commissioner Thomsen did not feel that the word "brief" was necessary, but that "reply" would suffice. Commissioner Spindell suggested that there be a deadline incorporated into that. Chair Millis didn't disagree, but noted that if they don't submit a reply within enough time to read it, that's their fault. Commissioner Jacobs agreed.

Chair Millis, calling back to a previous part of the discussion, was hesitant to shift the burden of presenting clear and convincing evidence to the candidate. He felt that, ultimately, the Commission should consider if the challenger presented clear and convincing evidence such that the challenge succeeds. Commissioner Jacobs asked what standard of evidence presentation should the candidate be held to in rebutting the challenge. Chair Millis reiterated his stance that, ultimately, it's on the challenger to present clear and convincing evidence.

Commissioner Jacobs felt that there was one more big "holistic" issue that warranted addressing with respect to challenges. She suggested that instead of a verified complaint what the Commission really requires is a verified statement of facts in addition to a legal brief in support of the challenge to the nomination papers. Chair Millis did not disagree in that someone may provide these documents if they wish. Commissioner Spindell expressed concern that many people running for office are not lawyers, and this may require them to hire lawyers.

The Commission reviewed the current language in EL 2.07(4) with respect to the "clear and convincing" standard of evidence and its origins.

The Commission decided to table the rest of the administrative rule discussion.

Commissioner Jacobs asked if there was any objection to her giving Attorney Sharpe her notes, to which there was none.

The Commission recessed at 5:46 p.m.

H. Discussion of a Potential Redesign of the Commission’s Wis. Stat. Chapter 5 Complaint Form

This agenda item was not discussed.

I. WEC Staff Updates to the Commission

This agenda item was not discussed.

J. Revisions to the Polling Place Accessibility Survey and Polling Place Plan

The Commission reconvened at 5:57 p.m.

Accessibility Specialist Regina Hein was no longer in attendance.

Wisconsin Elections Commission Supervisor Riley Willman discussed revisions to the survey used for polling place accessibility reviews and the WEC’s polling place review plan for the 2024-2025 elections cycle.

Supervisor Willman reviewed the history of polling place accessibility reviews and shared with the Commission the specific improvements that have been made to the program.

Discussion.

Commissioner Jacobs commended Commission staff for the good work that went into revising the survey.

MOTION: To approve the use of the 2024 Survey and the polling place review plan for the 2024-2025 election cycle.

Moved by Commissioner Jacobs. Seconded by Commissioner Riepl.

Roll call vote on the motion to approve the use of the 2024 Survey and polling place review plan for the 2024-2025 election cycle:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

K. Discussion, Review, and Possible Action Pertaining to the Commission Manuals for County/Municipal Clerks

Attorney Sharpe briefly reviewed the history of manual revisions that were recently approved by the Commission and went on to highlight the few items before the Commission today. Those being further revisions to the manuals deemed necessary in light of recent court decisions.

Discussion.

MOTION: To approve the proposed section “Voter Correction of Incomplete Absentee Certificate Envelopes,” as modified by the reorganization and additional text in the chart above [beginning on page 248 of the Commission’s meeting materials], including the following line in paragraph 12: “If the voter consents and communicates that consent to the clerk, a witness may go to the clerk’s office or polling place for the witness to correct the defect in the witness information section.” The Commission directs staff to insert this section into both the *Election Day* and *Election Administration* manuals, and further authorizes staff to make formatting, numbering, and other scrivener’s edits to the manuals consistent with effectuating these changes.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

MOTION TO AMEND: To include the instruction that, “The witness, upon arrival at the clerk’s office, before filling out the appropriate address, shows a picture ID.”

Moved by Commissioner Spindell. Seconded by Commissioner Millis.

Discussion.

Roll call vote on the motion to amend:

Bostelmann:	Aye	Riepl:	No
Jacobs:	No	Spindell:	Aye
Millis:	Aye	Thomsen:	No

Motion to amend fails 3-3.

Roll call vote on the motion to approve the proposed section, “Voter Correction of Incomplete Absentee Certificate Envelopes,” as modified by the reorganization and additional text in the chart above [beginning on page 248 of the Commission’s meeting materials]:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	No
Millis:	Aye	Thomsen:	Aye

The motion carried 5-1.

Attorney Sharpe then directed the Commission’s attention to page 259 of their meeting materials concerning options for a footnote related to the Commission’s just-approved manual revision.

Discussion.

MOTION: To approve the below version of the footnote for inclusion in the manuals:

Litigation Note: The definition of “witness address” is the subject of ongoing litigation. In two cases, Rise Inc., et al v. Wis. Elections Comm’n et al (2022CV0002446); League of Women Voters v. Wis. Elections Comm’n et al (2022CV002472), the Dane County Circuit Court-issued decisions on January 2, 2024, and permanent injunctions on January 30, 2024. Both cases are on appeal as of February 2024. Refer to “[Clerk Comm Title]” for further information on how the decisions and permanent injunctions provide explanation and definition of when a ballot may be rejected due to a defect in the witness address field. The manual will be updated to be consistent with the final appellate decisions in either or both cases.

Moved by Commissioner Jacobs. Seconded by Commissioner Thomsen.

Discussion.

Roll call vote on the motion to approve the footnote:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

The Commission discussed additional edits to the *Election Administration* and *Election Day* manuals.

MOTION: To accept the staff’s recommendation to remove the parenthetical “street number, street name, and municipality” from the line referenced above [on pages 257 and 258 of the meeting materials] that appears in the *Election Administration* and *Election Day* manuals. The Commission further authorizes staff to make formatting numbering, and other scrivener’s edits to the manuals consistent with effectuating these changes.

Moved by Commissioner Jacobs. Seconded by Commissioner Riepl.

Roll call vote on the motion to accept the staff’s recommendation to remove the parenthetical “street number, street name, and municipality” from the line referenced above [on pages 257 and 258 of the meeting materials]:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

Administrator Wolfe asked if the Commission would be willing to entertain a motion that changes the manuals’ revision date from January of 2024 to February of 2024.

MOTION: To change the revision date of the *Election Administration* and *Election Day* manuals from January of 2024 to February of 2024.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

Roll call vote on the motion to change the revision date of the *Election Administration* and *Election Day* manuals from January of 2024 to February of 2024:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

L. Discussion and Possible Action Pertaining to Potential Clerk Communications

Commission Staff Attorney Brandon Hunzicker appeared and apprised the Commission of developments in *Rise Inc., et al. v. Wis. Elections Comm'n et al.* (2022CV0002446) and *League of Women Voters v. Wis. Elections Comm'n et al.* (2022CV002472), including developments as recent as that afternoon.

Attorney Hunzicker reviewed with the Commission the directions they received from the Dane County Circuit Court on January 30, 2024.

Discussion.

MOTION: The Commission approves the revised and reissued clerk communication for *White et al. v. WEC*, the clerk communication for *Rise, Inc., et al. v. WEC et al.*, and attached orders, as edited by the Commission in today's meeting. Staff shall send the communications and attached orders to all Wisconsin County and Municipal Clerks and the County and City of Milwaukee Election Commissions on or before February 9, 2024.

The Commission approves the clerk communication for *League of Women Voters of Wisconsin v. WEC, et al.* as edited by the Commission in today's meeting. Staff shall send the communication and attached order to all Wisconsin County and Municipal Clerks and the County and City of Milwaukee Election Commissions on or before February 9, 2024.

The Commission approves the Q&A document as edited by the Commission in today's meeting. Staff shall send the communication to all Wisconsin County and Municipal Clerks and the County and City of Milwaukee Election Commissions on or before February 9, 2024.

Moved by Commissioner Thomsen. Seconded by Commissioner Jacobs.

Roll call vote on the motion to approve the clerk communications and the Q&A document:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

Administrator Wolfe appeared and briefed the Commission on the next potential clerk communication, this one reminding clerks that use of the new absentee envelopes is mandatory. It also includes specifications for how these envelopes should be printed.

MOTION: To authorize issuance of the memorandum on page 278 and 279 of the Commission’s meeting materials.

Moved by Commissioner Thomsen. Seconded by Commissioner Bostelmann.

Roll call vote on the motion to authorize the issuance of the memorandum on pages 278 and 279 of the Commission’s meeting materials:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

M. Discussion on Ballot Access Petition for Green Party

Administrator Wolfe appeared and directed Commissioners’ attention to the proposed motion on page 280 of their meeting materials. She added that the Green Party has petitioned under the statutory process for ballot status, their candidate for Secretary of State having received at least 1% of the statewide vote in 2022.

Administrator Wolfe also noted that the WEC is still waiting to receive the original paper copies of this petition and that this approval would be contingent on the WEC’s receipt of those.

MOTION: To grant approval of ballot status for the Wisconsin Green Party for the 2024 Partisan Primary and General Election subject to the arrival of the signed original document in the office of the Commission. Staff are directed to scan and send the document to the Commission upon its arrival, and to then take the actions necessary to implement the Green Party’s ballot status.

Moved by Commissioner Spindell. Seconded by Commissioner Riepl.

Roll call vote on the motion to approve ballot access for the Wisconsin Green Party:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

O. Adjourn

MOTION: To adjourn.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote on the motion to adjourn:

Bostelmann:	Aye	Riepl:	Aye
Jacobs:	Aye	Spindell:	Aye
Millis:	Aye	Thomsen:	Aye

The motion carried 6-0.

The Commission adjourned at 7:08 p.m.

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February 8, 2024 Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

February 8, 2024

Jacob Walters, Elections Specialist

February 9, 2024

February 8, 2024 Wisconsin Election Commission meeting minutes certified by:

Carrie Riepl, Commission Secretary

March 20, 2024



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

Wisconsin Elections Commission
Special Teleconference Meeting
201 W. Washington Avenue, Second Floor
Madison, Wisconsin
8:00 a.m. March 12, 2024

Open Session Minutes

Present: Commissioner Marge Bostelmann, Commissioner Ann Jacobs, Commissioner Don M. Millis, Commissioner Carrie Riepl, Commissioner Robert Spindell Jr., and Commissioner Mark Thomsen, all by teleconference.

Staff present: Joel DeSpain, Sharrie Hauge, Brandon Hunzicker, Robert Kehoe, Anna Langdon, Angela Sharpe, Riley Vetterkind, Riley Willman, Jim Witecha, and Meagan Wolfe, all by teleconference.

A. Call to Order

Commission Chair Millis called the meeting to order at 8:01 a.m. and called the roll. All Commissioners were present.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Meagan Wolfe informed the Commission that the meeting was noticed in accordance with Wisconsin's open meetings laws.

C. Closed Session

MOTION: Move into closed session pursuant to Wis. Stat. § 19.85(1)(g).

Moved by Commissioner Bostelmann. Seconded by Commissioner Jacobs.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

The Commission left open session at 8:02 a.m.

Wisconsin Elections Commissioners
Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

D. Discussion and Potential Action Related to the Recall Petition Pertaining to Assembly Representative Robin Vos and Any Related Recall Policy Considerations and Action.

The Commission returned to open session at 9:32 a.m.

Chair Millis noted that Administrator Wolfe had decided not to participate in the review of signatures and other general aspects of the recall process as her name was listed on the recall petitions, though there was no actual conflict of interest.

Staff Attorney Brandon Hunzicker clarified the total preliminary numbers of signatures within the various possible districts the Wisconsin Elections Commission could be directed to conduct a recall election in.

Attorney Hunzicker presented a review of the recall process, including the applicable statutes and timelines. He explained the uncertainty caused by *Clarke v. WEC* and specified that the question before the Commission was to determine which districts staff would use to conduct a second review of the recall petitions.

Discussion.

MOTION: Staff shall conduct the second review of the recall petition and review any challenge filings under all 3 possible maps that could apply to this recall petition. Staff shall make the second review available to the Petitioner and the Representative. Staff shall provide a recommendation for the Commission's consideration concerning whether enough signatures have been submitted in each potential district.

Moved by Commissioner Jacobs. Seconded by Commissioner Riepl.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

MOTION: The Commission directs the Wisconsin Department of Justice to request from the Wisconsin Supreme Court clarification on what districts or maps shall apply to this recall petition and election and any future recall petitions and elections, any future special elections.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

E. Adjourn

MOTION: To adjourn.

Moved by Commissioner Jacobs. Seconded by Commissioner Bostelmann.

Roll call vote:	Bostelmann:	Aye	Riepl:	Aye
	Jacobs:	Aye	Spindell:	Aye
	Millis:	Aye	Thomsen:	Aye

Motion carried 6-0.

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March 12, 2024, Wisconsin Election Commission meeting minutes prepared by:

Anna Langdon, Help Desk Staff

June 27, 2024

March 12, 2024, Wisconsin Election Commission meeting minutes certified by:

Carrie Riepl, Commission Secretary

June 27, 2024



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the March 20, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe
Administrator

Prepared and Presented by:
WEC Staff

SUBJECT: Revised Uniform Instructions for Military & Overseas Absentee Voters

1. Background

At its December 19, 2023, meeting the Wisconsin Elections Commission (“the Commission”) prescribed the final draft version of the revised Uniform Instructions for Absentee Voting pursuant to Wis. Stat. § 6.869. These instructions were drafted to provide information about how voters can ensure that their absentee ballot and certificate envelope are properly completed and timely returned to their municipal clerk. The instructions cover regular voters, military and overseas (UOCAVA) voters, and voters served by Special Voting Deputies. However, it was discovered that the Uniform Instructions for UOCAVA voters only addressed the UOCAVA voters who elected to receive their ballot online, by email, or by fax.

Per Wis. Stat. § 7.15(1)(cm), UOCAVA voters are allowed to request that they receive their ballot electronically, either online through the MyVote Wisconsin website, by email, or by fax. In the past presidential election, roughly 70% of UOCAVA voters chose to receive their ballot electronically. UOCAVA voters can also request that their absentee ballot be sent to them by mail. Wis. Stat. § 7.15(1)(cm).

Absentee ballots issued online, by email, or by fax to UOCAVA voters contain the initialed ballot and a PDF copy of the absentee ballot certificate. The UOCAVA voter then must complete their ballot and, along with their witness, complete the absentee certification. They then need to seal their absentee ballot in an envelope, and then glue or tape the completed absentee certification on the sealed envelope. If a UOCAVA voter wants to receive their ballot through the mail, the clerk will send the voter their absentee ballot, a copy of the Uniform Instructions, and a return certificate envelope that the voter can use to mail their ballot back to their municipal clerk.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

2. New Form

Currently, the Uniform Instructions for UOCAVA voters (EL-128U), only describes the process for voters who receive their ballot online, by email, or by fax. To ensure that UOCAVA voters who choose to receive their ballot by mail are given relevant information, staff have developed instructions to better describe the steps the voter needs to complete in order to properly return their absentee ballot.

A draft version of the Uniform Instructions for Military and Overseas Absentee Voters (Mail) is provided in Appendix A. The difference between the draft Uniform Instructions and the already approved Uniform Instructions for Military and Overseas Absentee Voters (Email and Fax) relate only to the method of a voter needing to create their own certificate envelope. The steps guiding a voter to affix their certificate envelope and place their newly created certificate envelope into a larger carrier envelope were removed.

The text on the draft Uniform Instructions for Military and Overseas Absentee Voters (Mail) derives from the previously approved Uniform Instructions for Wisconsin Absentee Voters (EL-128) and the previously approved Uniform Instructions for Military and Overseas Absentee Voters (Email and Fax).

3. Proposed Motion

The Wisconsin Elections Commission approves and prescribes the Uniform Instructions for Military and Overseas Absentee Voters (Mail) (EL-128UP), as shown in Appendix A for UOCAVA voters who request to receive their ballot by mail for all future elections. Staff are directed to update all Commission resources with this guidance and to notify clerks of this change.

Uniform Instructions for Military & Overseas Absentee Voters (Mail)



STEP 1 Read and follow the instructions on your ballot.
Mistakes may prevent your votes from being counted.

STEP 2 You must vote your ballot in the presence of an adult witness:

- Mark your ballot in the presence of your witness.
- Your witness cannot tell you who or what to vote for and cannot see the choices you make on your ballot.



Who can be a witness?

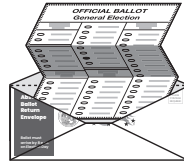
- For military or overseas voters, your witness must be at least 18 years old but is not required to be a U.S. Citizen.
- A witness can be a friend, spouse, family member, neighbor, etc.

Who cannot be a witness?

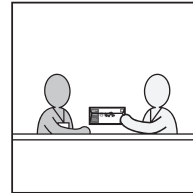
- A candidate on the ballot for this election.

If you're having trouble finding a witness or have questions about the witness requirement, please contact your municipal clerk.

STEP 3 Refold your voted ballot and place it inside of the return envelope.



STEP 4 Seal the envelope in the presence of your witness.



Make sure your envelope is completely sealed

STEP 5 Fill out the required sections of the absentee return envelope.

Required Elements

VOTER	Your voter information (may already be complete) Birth Date* Signature
	Signature
	Printed Name Address

*Military & Permanent Overseas Voters Only

STEP 6 Postage
Place appropriate postage on the exterior envelope. If you are on active military duty, you can drop off your ballot at a U.S. Consulate to be returned for free.

STEP 7 Return your ballot.

- Your ballot must be received in time to be delivered to your polling place or central count location **no later than 8:00 p.m. on Election Day.**
- Mail it back. Allow enough time for it to reach its destination
- If you are unable to use public mail or parcel services, consider commercial alternatives.

Absentee ballots may not be returned by email or fax.

If any of the required information above is missing, your ballot will not be counted.

Getting Assistance

If you need help reading or filling out your ballot or absentee return envelope, you may ask for assistance from anyone who is not your employer or a representative of your labor union. **Your assistant may also serve as your witness.** Explaining how to fill out your ballot or return envelope is not “assistance.”

With your absentee return envelope	With your ballot
<ul style="list-style-type: none">• If someone signs your absentee return envelope on your behalf, make sure they also sign in the <i>Certification of Assistant</i> section.• Your assistant may also serve as your witness.	<ul style="list-style-type: none">• Your assistant must sign in the <i>Certification of Assistant</i> section.• Your assistant can read your ballot to you or fill out your ballot under your direction but cannot tell you how to vote.

Ballot Damage & Mistakes

If you make a mistake while marking your ballot or completing the return envelope, **please contact your municipal clerk.** They can also field questions about how to request a new ballot and return it if you make a mistake.

You can find their information below or by scanning the QR code.



Voter Photo ID

- If you have received your ballot, then a copy of your photo ID is already on file or you are exempt from the requirement. You do not need to provide another copy of photo ID unless instructed by your clerk.

myvote.wi.gov/en-us/My-Municipal-Clerk

If you have any questions, please contact your municipal clerk for assistance.

Municipal Clerk Contact Information

(Name of Municipal Clerk)

(Name of Municipality)

Phone:

Email:

Fax:

State Election Official Contact Information Wisconsin Elections Commission

Help Desk: (608) 261-2028

Email: elections@wi.gov



Check absentee ballot return status, find voter information, and more on MyVote.wi.gov



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the **March 20, 2024**, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Presented by:
Brandon Hunzicker, Staff Attorney

SUBJECT: Second Draft of Rulemaking: Mandatory Use of Uniform Instructions for Absentee Voting, SS 093-23, SS 094-23

Introduction

On December 19, 2023, the Commission approved scope statements SS 093-23 and SS 094-23, relating to the proposed emergency and permanent rulemaking for the mandatory use of uniform instructions for absentee voting, pursuant to Wis Stats. §§ 227.135(2), 227.24(1)(e)1d.

At the February 8, 2024, meeting, the Commission met to review the first drafts prepared by staff and offered comments after a period of discussion. The Commission then passed the following unanimous motion:

The Wisconsin Elections Commission directs staff to implement edits to the proposed rulemaking draft for SS 093-23 and SS 094-23 for emergency and permanent rulemaking relating to the mandatory use of uniform instructions for absentee voting consistent with the discussion during the meeting, and to bring back a revised version of the rulemaking draft for Commission review and approval at an upcoming meeting.

Discussion

Staff made four changes to the drafts of both the emergency and permanent rules consistent with the discussion and consensus of the Commissioners at the February 8 meeting.

First, a new section—6.05(1)(a)—was inserted to provide the Commissioners’ preferred definition of “uniform instructions.” Staff confirm that they do not expect the form numbers for the current uniform instructions to change, nor do they expect that the Commissioners will approve a new version of uniform instructions in the near future. Even if the Commission does prescribe a new version of the uniform instructions in the future, staff do not believe that this rule would need to be amended because any new version would meet the first part of the definition—those prescribed by the Commission pursuant to § 6.869.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Second, 6.05(2)(a) was revised to specify that a clerk may provide administrative or logistical instructions in addition to the Commission's uniform instructions.

Third, 6.05(2)(c) was revised to also specify that a clerk may provide administrative or logistical instructions in addition to the Commission's uniform instructions.

Finally, the word "additional" was removed from the first sentence of 6.05(2)(c) because it was deemed repetitive.

Recommended Motion: The Wisconsin Elections Commission approves the proposed rulemaking drafts for SS 093-23 and SS 094-23 for emergency and permanent rulemaking relating to the mandatory use of uniform instructions for absentee voting. The Commission directs staff to submit the final draft emergency rule, SS 094-23, to the Governor, who must provide written notice of approval. Wis. Stat. § 227.24(1)(e)1g. Following gubernatorial approval, the Commission further directs staff to prepare a plain language analysis of the rule to be printed with the rule when published in the official state newspaper and with the Legislative Reference Bureau. Wis. Stat. § 227.24(1)(c), (d), (e) 1m., and (2). Finally, the Commission directs staff to proceed with the necessary permanent rulemaking steps for SS 093-23.

EL 6.05 Use of Commission-approved Uniform Instructions is Mandatory

6.05(1) GENERAL. A municipality is not permitted to provide absentee electors with any version of uniform instructions that has not been prescribed by the commission pursuant to s. 6.869 or to represent that any additional administrative or logistical instructions are the uniform instructions being provided or required in accordance with s. 6.869.

6.05(1)(a) As used in this section, “uniform instructions” mean those that are prescribed by the commission pursuant to s. 6.869. The commission has prescribed three versions of uniform instructions, which are numbered EL-128, EL-128CC, and EL-128U.

6.05(2) EXCEPTIONS.

6.05(2)(a) Nothing in subsection (1) above shall be interpreted to restrict a municipality’s ability to provide administrative or logistical instructions to absentee electors in addition to the uniform instructions, provided the additional instructions do not conflict with the commission’s uniform instructions or otherwise violate state or federal law.

6.05(2)(b) In this section, additional administrative or logistical instructions conflict with the commission’s versions of the uniform instructions if they provide information that is inconsistent with or contrary to the substantive procedures for completing and returning an absentee ballot. Additional administrative or logistical instructions also conflict with the commission’s versions of the uniform instructions if they provide details regarding the substantive procedures for completing and returning an absentee ballot that have not been prescribed by the commission.

6.05(2)(c) If a municipality elects to provide administrative or logistical instructions pursuant to 6.05(2)(a) in addition to the uniform instructions, those instructions cannot be added to any page containing the commission’s uniform instructions, including the blank reverse side of any page. They must appear on a separate, independent page to distinguish them from the versions of the uniform instructions that have been prescribed by the commission pursuant to s. 6.869.

6.05(2)(d) Nothing in subsection (1) above shall be interpreted to restrict a municipality’s ability to complete the “Municipal Clerk Contact Information” section on the versions of the uniform instructions that have been prescribed by the commission.

6.05(3) ENFORCEMENT.

6.05(3)(a) This rule may be enforced pursuant to an administrative complaint brought under ss. 5.06 or 5.05.

6.05(3)(b) This rule may be enforced through an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in s. 5.06(1) provided that the condition in s. 5.06(2) is also satisfied.

6.05(4) EFFECTIVE DATE.

6.05(4)(a) This emergency rule is effective as of June 10, 2024.

EL 6.05 Use of Commission-approved Uniform Instructions is Mandatory

6.05(1) GENERAL. A municipality is not permitted to provide absentee electors with any version of uniform instructions that has not been prescribed by the commission pursuant to s. 6.869 or to represent that any additional administrative or logistical instructions are the uniform instructions being provided or required in accordance with s. 6.869.

6.05(1)(a) As used in this section, “uniform instructions” mean those that are prescribed by the commission pursuant to s. 6.869. The commission has prescribed three versions of uniform instructions, which are numbered EL-128, EL-128CC, and EL-128U.

6.05(2) EXCEPTIONS.

6.05(2)(a) Nothing in subsection (1) above shall be interpreted to restrict a municipality’s ability to provide administrative or logistical instructions to absentee electors in addition to the uniform instructions, provided the additional instructions do not conflict with the commission’s uniform instructions or otherwise violate state or federal law.

6.05(2)(b) In this section, additional administrative or logistical instructions conflict with the commission’s versions of the uniform instructions if they provide information that is inconsistent with or contrary to the substantive procedures for completing and returning an absentee ballot. Additional administrative or logistical instructions also conflict with the commission’s versions of the uniform instructions if they provide details regarding the substantive procedures for completing and returning an absentee ballot that have not been prescribed by the commission.

6.05(2)(c) If a municipality elects to provide administrative or logistical instructions pursuant to 6.05(2)(a) in addition to the uniform instructions, those instructions cannot be added to any page containing the commission’s uniform instructions, including the blank reverse side of any page. They must appear on a separate, independent page to distinguish them from the versions of the uniform instructions that have been prescribed by the commission pursuant to s. 6.869.

6.05(2)(d) Nothing in subsection (1) above shall be interpreted to restrict a municipality’s ability to complete the “Municipal Clerk Contact Information” section on the versions of the uniform instructions that have been prescribed by the commission.

6.05(3) ENFORCEMENT.

6.05(3)(a) This rule may be enforced pursuant to an administrative complaint brought under ss. 5.06 or 5.05.

6.05(3)(b)

This rule may be enforced through an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in s. 5.06(1) provided that the condition in s. 5.06(2) is also satisfied.



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the March 20, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Brandon Hunzicker, Staff Attorney

SUBJECT: Observer Rule Order, Economic Impact Analysis Comments, and Draft Public Hearing Notice

Introduction:

On February 23, staff sent a draft of the observer Rule Order and Economic Impact Analysis (EIA) and Fiscal Estimate to the Observer Rule Advisory Committee and published a clerk communication containing links to the documents on the Commission website. On February 26, a notice of a comment period on the EIA was published in the administrative register. Individuals were given until March 11 to provide any comments on the EIA. Staff received only one comment following the solicitation of comments.

Staff now ask the Commission to consider the draft Rule Order, and draft EIA and Fiscal Estimate for submission to the Rules Clearinghouse. Staff also ask the Commission to consider a draft notice of submission to the Rules Clearinghouse and a draft notice of a public hearing and comment period. The Commission should consider whether it wishes to make any changes to the Rule Order or the EIA based on the economic comment received.

Following this memo, in corresponding order, are attachments consisting of the Draft Rule Order, EIA and Fiscal Estimate, comment received during the EIA comment period, draft notice of submission to the Rules Clearinghouse, and draft notice of hearing and comment period.

Discussion:

1. Draft Rule Order and Economic Impact Analysis

In addition to the submission to the Legislative Council's Rules Clearinghouse, described in section 2 below, the EIA must also be submitted to the Department of Administration, the governor, and to the chief clerks of each house of the legislature. Wis. Stat. § 227.137(4). Before the Commission can submit the Draft Rule Order and the EIA to the Rules Clearinghouse, it must finalize both documents.

Staff do not have any recommend changes to the attached Draft Rule Order (the Final Rule Order would be submitted to the Governor after the Commission makes any changes following Rules Clearinghouse review and public comments), which is identical to the version made available during the EIA comment period. However, the Commission may wish to make changes to the staff analysis, consisting of the first three pages of the Rule Order. The Commission may also wish to make changes to the draft rule text based on the economic impact comments that were received during the two-week comment period.

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Staff must make several adjustments to the EIA following the comment period. As an initial matter, staff recommend updating section 2 of the Draft EIA to provide the date of March 20, 2024, and to remove the word DRAFT, as this will be the final EIA, unless the WEC changes the rule to the extent a new EIA would be needed. Staff also recommend updating section 13 to show Clerk McMenammin of the City of Racine submitted comments on the draft EIA and requested to coordinate with the WEC in the development of the EIA.

Sections 7 (fiscal effect of implementing the rule), 9 (estimated dollar impact of proposed rules), and 14 (summary of economic impacts), may need to be updated after the Commission considers the Comments submitted by Clerk McMenammin. Staff do not have any specific recommended changes to these sections, but staff have attached the comments to this memo, and have invited Clerk McMenammin to coordinate with the Commission on the EIA by speaking to the Commission during this meeting, and to submit additional explanations and documents concerning the stated impacts.

The Commission may also wish to alter the Draft Rule Order based on the comments. The comment concerns a single section of the draft rule, proposed EL 4.03(8), which states in full that: “[t]he designated election official shall permit an observer access to any available chair within the observable location and with the same access to restrooms available to election officials at the observable location.”

2. Submission to Legislative Council’s Rules Clearinghouse and Public Hearing Notice — The Commission must submit the rule order and the economic impact analysis to the Legislative Council. Wis. Stat. § 227.15(1). It:

may not hold a public hearing . . . until after it has received a written report of the legislative council staff review of the proposed rule or until after the initial review period of 20 working days under sub. (2) (intro.), whichever comes first.

Id. The Commission must also prepare a notice under Wis. Stat. § 227.14(4m) concerning the submission of the proposed rule to the Legislative Council staff.¹ A draft notice in compliance with this statute is attached to this memo.

Along with the notice of submission to Legislative Council’s Rules Clearinghouse, the Commission may submit a notice of public hearing and comment period under Wis. Stats. §§ 227.16 and 227.17. None of the exceptions within Wis. Stat. § 227.16(2) apply, and the Commission would be required to hold a public hearing on the Observer Rule. The notice for the hearing must be approved by the Commission, and the Commission must publish the notice in the Administrative Register, send it to the secretary of administration, and provide whatever notice it believes is necessary to interested persons. Wis. Stat. § 227.17(1) & (2m). Commission staff recommend publishing the notice on the Commission’s website, as well as emailing it to the Observer Rule Advisory Committee members and publishing a clerk communication with a link to the notice.

¹ The notice must state: “the date on which the proposed rule has been submitted to the legislative council staff for review, of the subject matter of the proposed rule, and of whether a public hearing on the proposed rule is required under s. 227.16, and shall identify the organizational unit within the agency that is primarily responsible for the promulgation of the rule. The notice shall also include a statement containing the identifying number of the statement of scope for the proposed rule assigned under s. 227.135 (3), the date of publication and issue number of the register in which the statement of scope is published, and the date of approval of the statement of scope by the individual or body with policy-making powers over the subject matter of the proposed rule under s. 227.135 (2). The notice shall be approved by the individual or body with policy-making powers over the subject matter of the proposed rule. The agency shall send an electronic copy of the notice to the legislative reference bureau, in a format approved by the legislative reference bureau, for publication in the register. On the same day that the agency sends the notice to the legislative reference bureau, the agency shall send a copy of the notice to the secretary of administration. Wis. Stat. § 227.14(4m).

Though the Commission cannot hold the hearing prior to receipt of comments from Legislative Council or the expiration of 20 business days, it “may give notice of a public hearing prior to receipt of the legislative council staff report.” Therefore, the Commission could approve a notice for a public hearing and comment period as required by Wis. Stats. §§ 227.16 and 227.17 to take place 21 working days after staff submit the rule order and economic impact analysis to the Legislative Council.

If the Commission approves the draft notice of submission to the Rules Clearinghouse for March 21, then it could also approve a notice for a public hearing and comment period with a hearing date no earlier than April 22 (staff excluded Good Friday from the 20 working days count). This timeline would simultaneously comply with the requirement to publish the notice at least 10 days prior to the hearing. Wis. Stat. § 227.17(2). A draft notice in compliance with Wis. Stat. § 227.17(3), containing also all documents that would be submitted to the Rules Clearinghouse, is attached to this memo. Staff recommend holding the hearing virtually via Zoom at 1 p.m. on Wednesday, April 24.

Recommended Motion: Staff shall update the draft rule order and finalize the EIA as directed by the Commission during this meeting. Staff shall finalize the draft notice for the hearing and comment period and the draft notice of submission to the rules clearinghouse as directed by the Commission during this meeting, and take all necessary steps to publish those notices in the administrative register and as needed to provide the public with notice of the hearing as directed during this meeting. Staff shall send the notice of hearing to the secretary of administration. Staff shall submit the EIA to the Department of Administration, the governor, and to the chief clerks of each house of the legislature. Staff shall submit the Draft Rule Order and EIA and Fiscal Estimate to the Legislative Council’s Rules Clearinghouse.

DRAFT ORDER OF THE WISCONSIN ELECTIONS COMMISSION CREATING RULES

The Wisconsin Elections Commission proposes an order to **create** Chapter EL 4, relating to the conduct, regulation, and accommodation of election observers.

Analysis Prepared by the Wisconsin Elections Commission

1. Statutes Interpreted: Sections 5.02(6m), 5.25(4)(a), 5.35(4), 5.85, 7.41, 6.82, 6.87(5), 6.875(6)(c)1., 6.875(7) 6.34(3), 5.35(5), 7.37(2), 6.86(1)(b), 6.855, 6.88, 9.01(3), 7.52(1)(a), Stats.

2. Statutory Authority: Sections 7.41(5), 5.05(1), 5.05(1)(f), 7.08(3), 227.11(2)(a), Stats.

3. Explanation of Agency Authority:

Section 7.41(5), Stats., requires the Commission to promulgate rules concerning the conduct of election observers and their interactions with election officials.

Section 5.05(1), Stats., established the statutory authority and framework for regulation and administration of elections. It specifically states: “[t]he elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing.”

Section 5.05(1)(f), Stats., allows the Commission to “Promulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensuring their proper administration.”

Section 7.08(3), Stats., requires the Commission has authority to prepare and publish an election manual, that can be “easily understood by the general public explaining the duties of the election officials, together with notes and references to the statutes as the commission considers advisable.”

Section 227.11(2)(a), Stats., authorizes the commission to promulgate rules interpreting the statutes administered by the agency.

4. Related Statutes or Rules:

Because election observers will observe in person and absentee voting processes, many elections statutes are related. The most directly related statutes are sections 6.875(7), 7.52(1)(a), which directly extend the ability to observe the voting process to voting with Special Voting Deputies and processing of absentee ballots at a board of absentee ballot canvassers location, respectively. Section 9.01(3) explains the ability to observe at a recount.

5. Plain Language Analysis:

The Commission intends through this order to promulgate its required rule on election observers. The rule intends to clarify and bring uniformity to election observation for the benefit of voters, election officials, and observers. The rule will clarify the who is able to observe elections, define the rights and limitations of what election observers may do, differentiate election observers from election inspectors, and create a more stream-lined and accessible set of instructions for election observers to follow during the election process.

Section EL 4.02 defines terms relevant to observing elections, which should allow the process to proceed from known standards.

Section, EL 4.03 then address the conduct of election officials, explaining how they may limit the number of observers, check in and provide information to observers, establish observation areas so that observers can election processes, make observation areas accessible, warn observers, and remove observers from the location.

Section EL 4.04 describes the conduct of observers, explaining how to check in as an observer, move between observable locations, ask questions, challenge voters, take or not take images, and the general decorum expected of individuals observing voting.

Section EL 4.05 details requirements specific to the different kinds of locations that may be observed, namely polling places, clerk offices or alternate sites, board of absentee ballot canvassers locations, Special Voting Deputy served facilities, and recounts.

Sections EL 4.07 explains opportunities for media members to arrange with election officials times for reporting on voting.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

The Federal Government does not implement a specific approach to election observing and it instead vests broad power to the states to decide individually how to conduct their elections.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

The Commission held a virtual open session meeting on the statement of scope on January 17, 2023. Eleven members of the public attended the public meeting, many of whom commented on negative experiences they had as an Election Observer. The comments included concerns on how to coordinate Elections Observers from certain parties and concerns on the recommended amount of space that Election Observers should be positioned away from voters. Additionally, some of the comments suggested that the Commission assemble an advisory committee of key stakeholders to share insights concerning the Election Observers scope statement. Additionally, a number of observers commented that they were not allowed to use chairs or bathrooms that were available in the location. Some suggested that observers be allowed to go to the polling place prior to the election to give feedback on the layout of the polling place set up. Generally, the comments were in favor of the Commission addressing the issues presented in rulemaking.

8. Comparison with Similar Rules in Adjacent States:

Illinois, Michigan, Iowa, and Minnesota all have different terms for their versions of election observers, and all have processes outlined in statute that differ from section 7.41, Stats. Rather than election observers Illinois has “Poll-Watchers.” The qualifications and credentials needed to be a Poll-Watcher in Illinois are laid out in the state’s statutes as well as their rights and limitations. While there are strict qualifications to becoming a Poll-Watcher in Illinois, that is not the case in Michigan. Anyone, other than a candidate for elective office, can serve as a Poll-Watcher and may observe elections in Michigan. Michigan differentiates its Poll-Watchers from what it calls Election Challengers. Michigan details its rules and parameters in a document provided by the Michigan Bureau of Elections and ratified by the

State of Michigan's Secretary of State. Contrary to the previously covered states, Minnesota does not authorize poll-watching. Minnesota sets out in statute how to become an appointed Election Challenger in addition to the rights, limitations, and appointment process to becoming one. Lastly, and with a method similar to the state of Michigan, Iowa has its poll-watching parameters set in both statute and a guide prepared by the Office of the Iowa Secretary of State. This guide provides a corresponding Iowa statute that solidifies each of the suggested actions for poll-watchers as law. The guide labels a poll-watcher as a person who has the official permission to be at the polling place on election day or in the room where absentee ballots are counted before the polls close. If a poll-watcher is acting as a challenger however, Iowa requires a different set of requirements to be allowed to challenge.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

N/A

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

N/A

11. Effect on Small Business (initial regulatory flexibility analysis):

N/A

12. Agency Contact Person:

Brandon Hunzicker

brandon.hunzicker@wisconsin.gov

P.O. Box 7984, Madison, WI 53703-7984

608-267-0714

13. Place where comments are to be submitted and deadline for submission:

Written comments may be emailed to brandon.hunzicker@wisconsin.gov. While email is preferred, comments can also be mailed to P.O. Box 7984, Madison, WI 53703-7984. The deadline to submit comments concerning the Economic Impact Statement is March 11, 2024. An upcoming notice of a public hearing will contain a deadline for comments concerning the rule text.

RULE TEXT

SECTION 1. EL 4 is created to read:

EL 4.01 Right to vote. Nothing in this chapter shall be construed to distract, disrupt, obstruct, slow, or prevent a qualified elector from casting a lawful ballot or registering to vote.

EL 4.02 Definitions. In this chapter:

- (1) “Accessibility reviewer” means an individual authorized by the Commission who monitors compliance with s. 5.25(4)(a), Stats. An accessibility reviewer is not an observer under this chapter.
- (2) “Commission” means the Wisconsin Elections Commission.
- (3) “Chief inspector” means the chief inspector at a polling place, under s.7.30(6)(b), Stats.
- (4) “Clerk” means the municipal clerk, or the executive director of a municipal board of election commissioners, under s. 5.02(10), Stats.
- (5) “Communications media member” means an individual who communicates to the designated election official that the individual seeks to record or report information outside the voting area. Except as provided in s. EL 4.07(3), a communications media member is not an observer under this chapter.
- (6) “Confidential information” means information that is not part of the public aspects of the voting process, including an operator’s license or identification card number issued by the Wisconsin Department of Transportation, a birth date, a Social Security number or any portion thereof, accommodation information on a voter registration form, information concerning a confidential elector, guardianship information, a voted ballot, and a communication by a voter to a person rendering voting assistance under ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats. Confidential information does not include the type of document that is submitted for photo identification as defined by s. 5.02(6m) Stats. or for a proof of residency document as defined by s. 6.34(3) Stats., but includes the information provided thereon.
- (7) “Designated election official” means the chief inspector, if the observable location is a polling place, or the clerk, or any other election official designated by a chief inspector or clerk to carry out the election responsibilities under this chapter. At a facility served by special voting deputies, designated election official means the special voting deputies. At a recount, designated election official means the board of canvassers.
- (8) “Electioneering” has the meaning given in s. 12.03(4), Stats.

- (9) “Election official” means an individual who is charged with any duties relating to the conduct of an election. An individual authorized by the Commission to conduct any election related activities is an election official in this chapter.
- (10) “Inspector” or “election inspector” means an individual appointed pursuant to s. 7.30, Stats., to conduct an election.
- (11) “Member of the public” means an individual, excluding an election official, a candidate appearing on the ballot at that observable location, or a registered write-in candidate for an office voted on at that observable location.
- (12) “Observable location” means a polling place, a municipal clerk’s office that is located in a public building, an alternate absentee ballot site, a meeting location of a board of absentee ballot canvassers, a facility served by special voting deputies, a central count location, or a recount location during those hours specified in this chapter as permitting observation.
- (13) “Observe” means to see or hear and does not include physically handling election related materials or materials provided by the voter.
- (14) “Observer” means a member of the public who has signed in as an observer at an observable location and is present at an observable location to observe an election or the absentee ballot voting process.
- (15) “Organization” means an organization represented by an observer at an observable location under this chapter and shall not be construed to be limited to political parties, candidates, or campaigns.
- (16) “Posting and distribution of election-related material” has the meaning given in s. 12.035, Stats.
- (17) “Public aspects of the voting process” means the election activities that take place at an observable location during those hours specified in this chapter as permitting observation, except for inspection of confidential materials as defined in sub. (6).

(18) “Representing the same organization” means individuals who were deployed, assigned, trained by, or who identify as representing the same organization.

(19) “Voting Area” is that area at an observable location where electors receive, prepare, or deposit their ballots, or where electors cast their votes on a voting machine.

EL 4.03 Conduct of election officials.

(1) Due to physical limitations or the orderly administration of elections, or both, the designated election official may reasonably limit the number of observers representing the same organization who are present at any one time at an observable location. If the designated election official acts under this subsection, all organizations shall be limited in a uniform manner and the designated election official shall document the actions taken and the reasons why. The designated official may use a copy of an inspectors’ statement or other incident log to comply with this subsection.

(2) The designated election official shall maintain an observer log and shall require a member of the public intending to exercise the right to observe an election under s. 7.41, Stats., to enter the required information under EL 4.04(1) into the observer log and shall ensure that the photo ID presented reasonably resembles the observer and the name entered.

a) After completing the log, an observer shall be offered a summary of the rules governing election observers at the observable location, and be informed of the following:

1. To whom at the observable location the observer may direct questions during the day,
2. How the observer may move between observation areas throughout the day, and
3. The location where a ballot may be remade, if applicable.

b) After the requirements of par. (a) have been met, an observer shall then be directed to an area of the observable location established by the designated election official as an observation area. An observer log shall be returned to the municipal clerk after the election activities at an observable location have concluded.

- (3) The designated election official shall provide each observer with a sticker, badge, or other item that identifies an individual as an observer and distinguishes observers from election officials.
- (4) The designated election official shall establish at least one observation area to enable observers to readily observe all public aspects of the voting process during the election without disrupting the voting process. An observation area shall be not less than 3 feet nor more than 8 feet from each table at which electors announce their names and addresses to be issued voter numbers or at which election officials announce the name of absentee voters; not less than 3 feet nor more than 8 feet from each table at which electors may register to vote; and not less than 3 feet nor more than 8 feet from each table at which election inspectors remake any ballots.
- (5) An election official shall repeat, once and then at the election official's discretion, a name or address upon request.
- (6) The designated election official shall position an observer area to minimize contact between observers and voters and election officials.
- (7) An observation area shall be accessible to observers with disabilities and shall include sufficient space for mobility equipment, chairs, or other disability aids brought by an observer.
- (8) The designated election official shall permit an observer access to any available chair within the observable location and with the same access to restrooms available to election officials at the observable location.
- (9) The designated election official of any observable location that is unable to accommodate the observation areas as described in sub. (4) shall record the reason the requirements were not met and shall send a copy of that record to the Commission within 60 days of the election for which the observable location was active.
- (10) In a manner established by the designated election official, election officials shall allow an observer to observe absentee ballot certificate envelopes that have been set aside to be rejected.

- (11) An election official shall permit an observer to observe the poll lists, excluding the confidential portions of the lists maintained under ss. 6.36(4) and 6.79(6), Stats., at such times as election officials determine that doing so does not interfere with or distract electors under s. 5.35(5) Stats., and does not interfere with the conduct of the election under s. 6.45(1m), Stats.
- (12) No election official may permit an observer to handle an original version of any official election document.
- (13) No election official may permit an observer to observe any confidential information.
- (14) If an observer violates a provision of this chapter or any applicable election statute the designated election official shall, verbally or in writing, warn an observer one time to cease the offending conduct.
- a) If an observer does not cease the offending conduct following a warning under this section, the designated election official may order an observer to depart from the observable location. If the designated election official is a person other than the Chief Inspector or municipal clerk, the designated election official shall notify the Chief Inspector or municipal clerk.
 - b) If the offending observer who is ordered to depart under par. (a) declines or otherwise fails to comply with the designated election official's order to depart, the official may summon law enforcement to remove the offending observer consistent with s. 7.37(2), stats. The designated election official shall provide a written order to the observer which includes the reason for the order and the signature of the designated election official.
 - c) If the designated election official who has issued an order to an observer to depart has been appointed from a list provided by a political party under s. 7.30 (4) Stats. an election official representing the opposite political party than the designated election official, if available timely on a timely basis, shall be offered the opportunity to sign the written order, and to note any concurrence or disagreement with that order. Failure of that

election official to sign the written order, or the unavailability of that official to review the order in a timely fashion, does not affect the enforceability of that order.

- d) If an observer is ordered to leave an observable location, the incident shall be recorded and the designated election official shall, within 60 days of the incident, provide to the Commission a copy of the order and any other documentation of the incident. The designated official may use a copy of an inspectors' statement or other incident log to comply with this subsection.

EL 4.04 Conduct of observers.

- (1) A member of the public intending to exercise the right to observe an election under s. 7.41, Stats., shall notify the designated election official of that intent upon entering the observable location and shall sign the election observer log acknowledging that the observer understands the applicable rules and will abide by them. An observer shall present photo identification showing the observer's name to the designated election official and shall legibly print the observer's full name, street address and municipality, and the name of the organization the observer represents, if any, on the observer log. The photo identification does not need to conform to the requirements of s. 5.02(6m), Stats.
- (2) An observer shall comply with the designated election official's commands or shall be subject to removal from the observable location pursuant to EL 4.02(14)(a).
- (3) If more than one observation area is established within an observable location, an observer may move between such areas in a manner established by the designated election official.
- (4) An observer may direct questions to the designated election official or other election officials as determined by the designated election official and communicated to observers when they sign the observer log pursuant to s. EL 4.03(2)(a)1.
- (5) Any challenges brought by a qualified observer against a voter for cause shall be directed to an election official in accordance with ss. 6.925, 6.93, 6.935 Stats., and Ch. EL 9 Wis. Admin. Code.

- (6) No observer may engage in any loud, boisterous, or otherwise disruptive behavior, that, in the discretion of the designated election official, threatens the orderly conduct of the election or interferes with voting or registration.
- (7) No observer may create or transmit photographs, videos, or audio recordings of any observable location except as expressly permitted by this chapter.
- (8) An observer shall keep conversation to a minimum and shall conduct whatever conversation is necessary at a low enough volume to minimize distraction to electors and election officials.
- (9) No observer may engage in electioneering as defined in s. 12.03, Stats., or the posting or distribution of election-related material as defined in s. 12.035, Stats.
- (10) No observer may display the name or likeness of, or text related to, a candidate, party, or referendum position appearing on the ballot, or display text which describes, states, or implies that the observer is an election official.
- (11) No observer may engage in any conversation concerning a candidate, party, or question appearing on the ballot.
- (12) No observer may use a communication device inside an observer area to make an audio or video communication. Text messaging, email, and other non-audible uses of such a device are permissible except as otherwise prohibited by this chapter.
- (13) No observer may initiate a conversation with a voter. If a voter initiates a conversation with an observer inside an observable location, except as allowed by subsection (13), the observer may briefly respond to the voter if such response does not disturb other voters or the orderly administration of the election. The observer may also refer the voter to an election official for any election related questions, and briefly explain to the voter that the observer is observing the election and is not an election official. A brief wave or greeting to an individual known to the observer does not constitute a violation of this section.
- (14) An observer may communicate with the designated election official and any other election officials at the discretion of the designated election official.

- (15) Nothing in this chapter shall be construed to prevent an observer from assisting an elector in accordance with ss. 6.82, 6.87(5), or 6.875(6)(c)1., Stats., provided that the elector requests the observer's assistance.

EL 4.05 Location specific requirements.

(1) POLLING PLACE.

- a) An observer shall be allowed to observe beginning at 7 a.m. or whenever machines are zeroed out on Election Day, whichever is earlier, and ending at 8 p.m. or when the last voter who was in line to vote at or before 8 p.m. has finished voting. After 8 p.m., or after the last voter who was in line has voted, whichever is later, an observer may remain at the polling place to observe canvassing under Wisconsin's open meetings law. If any observer is allowed access outside of the time frame provided herein, all observers shall be allowed the same access.
- b) No observer may create or transmit photographs, videos, or audio recordings of the interior of the observable location until the public canvassing meeting has begun.

(2) MUNICIPAL CLERK OFFICE OR ALTERNATE SITE.

- a) An observer shall be permitted to observe the in-person issuing and voting of absentee ballots under s. 6.86(1)(b), Stats., during the hours such activities may occur at a municipal clerk's office whose office is located in a public building, or at an alternate absentee ballot site under s. 6.855, Stats. The return of voted by-mail absentee ballots to a municipal clerk's office or alternate site by the US Postal Service is not covered by this chapter unless it occurs in the same location and during the same hours as the issuing and voting of absentee ballots.
- b) An observer shall be permitted to observe the initial enclosing and securing of an absentee ballot required under s. 6.88, Stats., that is received under par. (2)(a).

(3) BOARD OF ABSENTEE BALLOT CANVASSERS.

- a) An observer shall be permitted to observe during all hours when a board of absentee ballot canvassers is meeting to canvass absentee ballots, and observation shall not start later than the zeroing of election equipment.
- b) An observer may create or transmit photographs, videos, or audio recordings of the observable location. However, an observer may not create or transmit any photographs, videos or audio recordings of any individual depositing an absentee ballot or correcting, under s. 6.87(9), Stats., an absentee ballot certificate envelope.

(4) ABSENTEE VOTING IN RESIDENTIAL CARE FACILITIES AND RETIREMENT HOMES.

- a) Only one observer from each of the 2 political parties whose candidate for governor or president received the greatest number of votes in the municipality in the last general election may accompany the special voting deputies to absentee voting locations described in s. 6.875, Stats. Each party wishing to have an observer present shall submit the name of the observer to the clerk or board of election commissioners no later than the close of business on the last business day prior to the visit to the facility.
- b) An observer shall be permitted to accompany the special voting deputies during the hours when the deputies will be administering voting in accordance with s. 6.875, Stats.
- c) An observer shall comply with any requirements imposed on visitors by a facility served by special voting deputies.
- d) An observer shall be permitted to observe the process of absentee ballot distribution in the common areas of the home or facility.
- e) The Special Voting Deputies may not permit any person other than a Special Voting Deputy or relative of the elector assisting the elector in marking the ballot to hear any discussion regarding the electoral choices of the elector. Special Voting Deputies must enforce the voter's constitutional right to cast a secret ballot, just as the individual is entitled to in other absentee or polling place settings.

- f) An observer shall not be permitted to enter a voter's private room, however the observer shall be permitted to observe such voting from a common area in accordance with sub. (4)(d). The voter may elect to close their door or otherwise secure their voting privacy.

(5) RECOUNT.

- a) An observer shall be permitted to observe during all hours when a recount is occurring.
- b) The petitioner, all opposing candidates, interested persons and their counsel, as described in 9.01(3), Stats., are not subject to the limitations of this chapter.
- c) The designated election official shall establish at least one area in which observers may observe the proceedings.
- d) An observer may create or transmit photographs, videos, or audio recordings of the observable location.

(6) CENTRAL COUNT.

- a) An observer shall be permitted to observe all counting of ballots occurring at a central counting location.
- b) An observer may create or transmit photographs, videos, or audio recordings of the observable location.

4.06 Post-observation practices.

- (1) After all voting activity has concluded within the observable location, candidates may be present and the prohibition of creating or transmitting photographs, videos, and audio recordings does not apply unless such action is disruptive or interferes with the administration of the election.

4.07 Communications Media

- (1) A communications media member shall identify him or herself and any organization the communications media member represents to the designated election official upon arriving at the observable location. At the discretion of the designated election official, a communications media member may use video and still cameras outside of the voting area, provided the cameras are not

used in a manner that allows the recording of any confidential information, including voted ballots, or that disrupts or interferes with voting or the orderly conduct of the election.

(2) The designated election official may limit the amount of time any communications media member may use video and still cameras. Any limitations, rules, and regulations imposed on communications media members shall be uniformly applied.

(3) A communications media member may act as an observer, but when so doing is subject to the provisions of this rule.

SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2), Stats.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 2/23/24 - DRAFT
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Proposed Chapter EL 4 - Election Observers	
4. Subject The conduct, regulation, and accomodation of election observers	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis Stat. 20.510 Elections Commission
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$ 0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule Currently, there are no administrative rules regarding election observers, and municipalities use Commission guidance instead to help administer election observation. The proposed rule would add clarity and bring uniformity to the processes around election observation, including checking in as an observer, conduct of observers, election officials selecting observer areas, providing information to observers, and managing observers alongside other election responsibilities.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. Members of the Commission's advisory committee on election observers and all Wisconsin municipal clerks were contacted for comments.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. N/A (this will be updated following the comment period)	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) There will be little to no economic and fiscal impact on buisnesses, buisness sectors, public utility rate payers or the state's economy as a whole due to the implementation of this proposed rule. Local government units, specifically all municipal clerks, will need to use these rules to trail election officials concerning election observation, and take the time to establish observer areas and prepare observer materials. However, as election observation and training of election inspectors already occurs, this rule should merely standardize and clarify existing processes, rather than require additional resources. Municipal clerks do not need to hire any new staff to implement the procedures.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The main benefit of implementing this rule is that all Wisconsin municipalities would be bound by its provisions, bringing a common understanding to the process of election observation, and reducing the differences that may exist in practices across different municipalities. Having election observation be relatively uniform statewide should allow	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

voters, election officials, and observers to know what to do and what to expect. Everyone having an opportunity to know what the rules are should facilitate smooth elections. There is no clear alternative to implementing this rule other than not implementing it and remaining with the status quo, in which all clerks may use Commission guidance, but must make their own decisions about how to carry out the very general requirements of section 7.41, Stats.

16. Long Range Implications of Implementing the Rule

These rules will allow each municipality to create uniform practices for election observation. There should be increased confidence that observing elections looks the same across the state, and that election officials know what they need to do and observers know what they are able to do. This should add stability to the process and may increase confidence in elections due to the knowledge that there is a fair method to observe how voting was carried out locally.

17. Compare With Approaches Being Used by Federal Government

The Federal Government does not implement a specific approach to election observing as they vest those powers to the states to decide individually.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The qualifications and credentials needed to become an Election Observer in Illinois, Iowa, and Minnesota are outlined in statutes that differ greatly from section 7.41, Stats. In addition to putting both the rights and needed qualifications in statute, the state of Iowa has its "poll-watching" parameters set both in statute and a guide prepared by the Office of the Iowa Secretary of State while Michigan details its rules and parameters strictly in a document provided by the Michigan Bureau of Elections and ratified by the State of Michigan's Secretary of State. Michigan and Minnesota differentiate the qualifications and duties for being able to poll-watch from the ability to challenge an election.

<h4>19. Contact Name</h4> <p>Brandon Hunzicker</p>	<h4>20. Contact Phone Number</h4> <p>608-267-0714</p>
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

There should be no economic or fiscal impact on small businesses from the implementation of this proposed rule.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

N/A

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

None of these methods were considered since nothing in the rule places any burden on small businesses.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

5. Describe the Rule's Enforcement Provisions

N/A

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Tara McMenamin
730 Washington Ave
Racine, WI 53403
Tara.mcmenamin@cityofracine.org
262-636-9171

Wisconsin Election Commission
212 East Washington Avenue, Third Floor
Madison, WI 53703

Official Statement Against Proposed Permanent Rule Relating to the Conduct Regulation and Accommodation of Election Observers Regarding Bathroom Facilities

Dear Members of the Wisconsin Election Commission,

I am writing to express my strong opposition to the proposed permanent rule relating to the conduct regulation and accommodation of election observers, specifically concerning the issue of utilizing school bathroom facilities for observers during elections. As a municipal clerk many of my polling locations are community buildings and schools. Community buildings have public bathrooms, however schools do not. I believe that this section of the proposed accommodation poses significant challenges and risks that must be addressed before its implementation.

One of the primary concerns regarding this proposed rule is the compromise of school security. Allowing election observers to utilize bathroom facilities during voting hours within schools raises serious safety concerns, particularly in light of the increasing focus on school security measures. Granting access to individuals whose backgrounds are unknown and unverified poses an unnecessary risk to the safety and well-being of students, teachers, and staff within these educational institutions. It is imperative that the safety of our schools remain paramount, and any proposed rule that could undermine this principle must be reconsidered.

Furthermore, the addition of costs associated with the proposed rule would create economic hardship for local election authorities. The requirement to employ police officers or security guards to escort observers to the bathroom during voting hours would place an undue financial burden on already-strained budgets. You are essentially requiring local clerks to decide between easily accessible ADA compliant voting facilities or school safety.

The City of Racine currently has 15 polling locations, of which 10 are schools. To properly staff 10 locations with a police officer to escort observers to restrooms would cost the City roughly \$9,997.80 per election or upwards of \$39,991.20 for a four election year. Keep in mind this is only an option if police officers are available and does take away 10 officers creating an operational burden to our already short staffed police department. Officers reassigned to this particular assignment would mean less officers available for day-to-day operations.

Additionally, there is a glaring lack of accountability and oversight regarding the background checks of election observers at the polls. Local clerks do not have the means or right to check the criminal records of observers, leaving the polling stations vulnerable to potential risks posed by individuals with criminal backgrounds. I truly believe having observers at polling locations is a positive incentive that helps uphold the moral integrity of those working the polls. However, there is no means to ensure those observing the polls would receive security clearance to utilize school bathrooms.

In light of these concerns, I urge the Wisconsin Election Commission to reconsider the proposed permanent rule relating to the conduct regulation and accommodation of election observers. It is essential that any changes to election procedures prioritize the safety and security of all individuals involved, uphold the integrity of the electoral process, and ensure equitable access to voting rights for all citizens. This can be an easy fix to add one line to the proposed rules stating bathrooms must be accessible to observers in all public restroom facilities.

Thank you for considering my official statement on this matter, I request to coordinate with the Commission on the EIA. I trust that you will carefully weigh the implications of the proposed rule and take appropriate action to address the concerns raised by concerned municipal clerks like myself.

Sincerely,



Tara McMenamin
Director of Customer Service/City Clerk
City of Racine
Tara.mcmenamin@cityofracine.org

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On March 21, 2024, the Wisconsin Elections Commission submitted a proposed rule to the Wisconsin Legislative Council Clearinghouse pursuant to s. 227.15 (1), Wis. Stats.

Analysis

The proposed rule would create Wis. Admin Code Chapter EL 4, relating to the conduct, regulation, and accommodation of election observers.

Statement of Scope

The scope statement for this rule, SS 089–22, was approved by the Governor on October 20, 2022, published in Register No. 803A3, on November 21, 2022, and approved by The Wisconsin Elections Commission by a unanimous vote on February 2, 2023.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 24, 2024, at 1 p.m. on Zoom. Materials related to the proposed rule and the public hearing notice can be found on the Commission’s website at this link: <https://elections.wi.gov/draft-rule-chapter-el-4-election-observers>.

Agency Organizational Unit Primarily Responsible for Promulgating Rule

Wisconsin Elections Commission

Agency Contact Person

Brandon Hunzicker – Staff Attorney
brandon.hunzicker@wisconsin.gov
P.O. Box 7984, Madison, WI 53703-7984
608-267-0714

Notice of Hearing

The Wisconsin Elections Commission announces that Commission staff will hold a public hearing on a permanent rule to create Wis. Admin Code Chapter EL 4 relating to the conduct, regulation, and accommodation of election observers at the time and place shown below.

Hearing Information

Date: Wednesday, April 24, 2024

Time: 1:00 p.m.

Location: *See below for virtual attendance options*

Please click the link below to join the webinar:

https://us06web.zoom.us/j/83462439279?pwd=FFyH0sTTbR2r2YR_boSLUCKCi-Atbw.XwkMYtSdQZzuHhGB

Passcode: 420634

Or One tap mobile :

+13126266799,,83462439279#,,,,*420634# US (Chicago) +16465588656,,83462439279#,,,,*420634# US (New York)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 312 626 6799 US (Chicago), +1 646 558 8656 US (New York), +1 646 931 3860 US, +1 301 715 8592 US (Washington DC), +1 305 224 1968 US, +1 309 205 3325 US, +1 253 215 8782 US (Tacoma), +1 346 248 7799 US (Houston), +1 360 209 5623 US, +1 386 347 5053 US, +1 507 473 4847 US, +1 564 217 2000 US, +1 669 444 9171 US, +1 689 278 1000 US, +1 719 359 4580 US, +1 720 707 2699 US (Denver), +1 253 205 0468 US

Webinar ID: 834 6243 9279

Passcode: 420634

International numbers available: https://us06web.zoom.us/j/83462439279?pwd=FFyH0sTTbR2r2YR_boSLUCKCi-Atbw.XwkMYtSdQZzuHhGB

Accessibility

This meeting will include the option for captioning. Additional accessibility considerations may be available and can be requested by contacting elections@wisconsin.gov.

Appearances at the Hearing and Submittal of Written Comments

Anyone may attend the hearing and provide a perspective on the proposed rule. Oral comments will be limited to a 4 minute presentation per person.

The proposed rule may be reviewed at https://docs.legis.wisconsin.gov/code/scope_statements/all/089_22 and <https://elections.wi.gov/draft-rule-chapter-el-4-election-observers>. Please send any written comments directly by email to brandon.hunzicker@wisconsin.gov no later than 4:30 p.m. Wednesday, April 24. Comments may also be submitted at <https://docs.legis.wisconsin.gov/code/chr/comment>, or mailed to:

Brandon Hunzicker
P.O. Box 7984
Madison, WI 53707-7984

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Notice of Possible Quorum

Wisconsin Elections Commission

Public Hearing Seeking Comment on Administrative Rule Scope Statement
Wednesday, April 24, 2024
1:00 p.m.

A quorum of the members of the Wisconsin Elections Commission may be present at the agency's public hearing seeking comment relating to a proposed rule concerning the conduct, regulation, and accommodation of election observers.

Notice is hereby given that the above gathering may constitute a meeting of the Wisconsin Elections Commission. However, no items are on an agenda for Commission consideration, nor will action be taken by the Commission.

Approved: March 20, 2024

/s/ _____
Carrie Riepl, Commission Secretary



Wisconsin Elections Commission

201 West Washington Avenue | Second Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

**This Item originally appeared on the January 24, 2024 Commission agenda and was moved to March 20, 2024. The materials for this item are unchanged.

DATE: For the **March 20, 2024**, Commission Meeting
TO: Members, Wisconsin Elections Commission
FROM: Prepared and Presented by:
Jim Witecha
Chief Legal Counsel
SUBJECT: Consideration of Recount Manual Revisions

Purpose & Orientation

This memorandum and its attachments present suggested edits to the Election Recount Procedures manual to ensure that the guidance therein is consistent with statutory requirements and litigation decisions, as well as improvements to readability and compliance assessments.

- Appendix A – Legal Revision Chart (Election Recount Procedures)
- Appendix B – Redline of Election Recount Procedures manual showing proposed changes.

The majority of the recommended updates referenced in this memo required significant review and represent a large number of proposals by staff. Accordingly, these updates were grouped together so that the Commission may carefully consider the proposed language, the optional language, and the legal questions presented. Each category below has been assigned a color and a topic identifier. Both are present on the chart included as Appendix A. The chart also contains a column identifying the page number of each respective manual on which the proposed redline changes appear.

These topics include:

Color Code	Topic	Corresponding Line Numbers in Appendix A (Election Admin.)
Blue	Typo/Formatting	2, 3, 4, 6, 7, 8, 12, 14, 15, 16, 19, 20, 21, 24, 35, 38, 41, 42, 47, 49, 50, 51, 52, 53, 55
Orange	Commission Directives	5, 28, 54, 63
Green	7.08(3)(c) Manual Maintenance	9, 10, 11, 13, 17, 18, 22, 23, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 39, 40, 43, 44, 45, 46, 48, 56, 57, 58 59, 60, 61, 62

Wisconsin Elections Commissioners

Don M. Millis, chair | Marge Bostelmann | Ann S. Jacobs | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Typo/Formatting

These changes reflect nominal revisions, not requiring any substantive discussion in this meeting. However, staff are standing by to discuss or answer questions as needed.

Possible Motion for this Topic: The Wisconsin Elections Commission (“the Commission”) directs staff to implement changes from Appendix A, as color coded blue, the “Typo/Formatting” category into the Election Recount Procedure manual. The Commission further authorizes staff to make formatting, numbering, and other scrivener’s edits to the manuals consistent with effectuating these changes.

Commission Directives

These changes, or relevant highlighted sections, are designed to prompt the Commission to revisit or reconsider portions of the manual that are based on general directives issued by the Commission in the past.

Possible Motion for this Topic: The Commission directs staff to implement changes, otherwise modify, or add/remove content from the Election Recount Procedures manual, all content from Appendix A as color coded orange, in accordance with the Commission’s guidance or decisions rendered at its January 24, 2024, meeting. The Commission further authorizes staff to make formatting, numbering, and other scrivener’s edits to the manuals consistent with effectuating these changes.

7.08(3)(c) Manual Maintenance

These changes, or relevant highlighted sections, are designed to have the Commission consider changes to portions of the manual that require more substantive analysis, compliance-based changes, or the examination of other complex topics.

Possible Motion for this Topic: The Commission directs staff to implement changes, otherwise modify, or add/remove content from the Election Recount Procedures manual, all content from Appendix A as color coded green, in accordance with the Commission’s guidance or decisions rendered at its January 24, 2024, meeting. The Commission further authorizes staff to make formatting, numbering, and other scrivener’s edits to the manuals consistent with effectuating these changes.

Section	Page	Action Taken	Material	Type of Update	Why?
Cover Page	N/A	Modify	Updated proposed revision date for the manual.	Typo/Formatting	Proposing a new revision date for the cover page of "January 2024," as a placeholder in case the Commission approves the manual for re-publication with these changes at its January meeting.
Cover Page	N/A	Modify	Updated web address.	Typo/Formatting	Updated the agency's website address from "http" to "https" and ensured the hyperlink is correct.
Table of Contents	N/A	Modify	Placeholder: New page numbers.	Typo/Formatting	Agency staff will need to update the new page numbers in the Table of Contents once the redlines are accepted and the draft is ready to be finalized.
Table of Contents	N/A	Modify	Unhighlighted "Public Health Guidance."	Commission Directives	The Commission previously approved public health guidance as an addition to the recount manual in 2020. It was also left highlighted to show which changes had been made from the prior version. All references are unhighlighted and left as potential permanent additions.
Introduction	N/A	Delete	Remove "Introduction" page.	Typo/Formatting	Staff propose removing this page in its entirety. It is unnecessary, portions are worded in an undesirable way, and other components are redundant.
All Sections	All	Add	Hyperlinks added to all statutory cites.	Typo/Formatting	Note to the Commission: In the conversion to this new manual document, all of the existing hyperlinks were lost. Subsequently, all statutory citations will now show up as a redline because a link was added. Some were incorrect, needed additional cites, or otherwise needed to be updated, so they all remain redlines. Those that were incorrect or changed in any way will also show the changes made and have an entry in this chart.
Who May Request a Recount?	1	Modify/Add	Statutory addition and format correction.	Typo/Formatting	The formatting of statutory citations in this manual was inconsistent, particularly with dual/multiple citation. This format was selected and applied throughout. The second subsection cited here was also added to the manual for proposed publication.
Who May Request a Recount?	1	Modify / Add / Move	Section reworked for clarity and deletion of duplicative material.	7.08(3)(c) Manual Maintenance	This section was generally reworked for clarity, to shift items to a more logical location, to modify misleading statements, and to delete information already covered in more appropriate sections of the manual.
How is a Recount Requested?	1	Modify/Delete	Conforming language to statute and removing duplicative material.	7.08(3)(c) Manual Maintenance	This section was modified to more closely conform to statute, address a referendum petition, and remove information covered in a specific section later in the manual.
What is a Recount Petition?	1,2	Modify	Various changes.	7.08(3)(c) Manual Maintenance	<u>Subsection 1:</u> Removed. This is not a separate requirement. Subsection 3 below covers 9.01(1)(a)3., which requires that the wards to be recounted be named, or that a recount of all wards be conducted. <u>Subsection 2:</u> Modified for clarity and reference to other sections. <u>Subsection 3:</u> Removed "general," as this is not found in statute and contradicts the statement that the petitioner is "informed," which is found in statute. The word "shall" is highlighted for further Commission consideration. The requirement in this sentence is not directly required by statute. However, the petition is to be "informed, valid, sworn," etc., and the Commission would be best served keeping someone kind of statement here. This type of assertion aligns with similar statements in the Commission's standard "Complaint Form (EL-1100)." That said, the Commission may wish to change this word from "shall" to something less directive in nature.

Section	Page	Action Taken	Material	Type of Update	Why?
What is a Recount Petition?	3	Modify	Rewording for clarity.	Typo/Formatting	Simply rewording this sentence to restate it more directly.
What is a Recount Petition?	3	Modify	Updated "Sample Recount Petition" form numbers.	7.08(3)(c) Manual Maintenance	EL-186R is no longer a published sample document. These proposed manual edits would add a link to EL-186 and EL-187 on the new website page for the sample petition documents. These same changes are applied again in the manual.
What is a Recount Petition?	2	Modify	Updated Wis. Stat. s. 9.01 references.	Typo/Formatting	The second to last paragraph in this section needed to be updated to correct the citation itself, as well as the subsections being cited. The citation was missing a period. Additionally, the manual's citations should be broader. It only cites specific fee provisions, but ignores the form requirements for a petition found throughout subsection (1)(a).
When is a Filing Fee Required?	3	Modify	Rewording for clarity.	Typo/Formatting	Simply rewording this paragraph to restate it more directly or better comply with statute.
When is a Filing Fee Required?	3	Modify	Updated statutory citation format.	Typo/Formatting	This is nothing more than a formatting change to reflect the proper/consistent dual citation format now used throughout the manual.
When is a Filing Fee Required?	3	Delete	Delete Footnote 2.	7.08(3)(c) Manual Maintenance	Covered in the body text and edited. Footnote now redundant.
When is a Filing Fee Required?	5	Modify/Delete	Corrections to comply with statute.	7.08(3)(c) Manual Maintenance	Corrections made to comply with statute which states: "For purposes of this subdivision, a petitioner has not overpaid the fees due under subd. 2., and is therefore not entitled to a refund under this subdivision, if the recount results in a difference in the votes cast that is below the threshold for paying the fee under subd. 2."
When is a Filing Fee Required?	5	Modify	Spelling corrections and clarity corrections.	Typo/Formatting	Two instances of the word "threshold" were corrected to the proper spelling (if one is kept) .
Campaign Finance Note:	5	Modify	Update to the Ethics Commission website address.	Typo/Formatting	The Ethics Commission has a new website, and the web address and hyperlink have been updated.
Where Does the Petitioner File the Recount Petition?	5	Modify	Updated statutory citation format.	Typo/Formatting	This is nothing more than a formatting change to reflect the proper/consistent dual citation format now used throughout the manual.
When Must the Petition be Filed?	5	Add	Added language to conform with statute.	7.08(3)(c) Manual Maintenance	Language was added to note the focus of Wis. Stat. s. 9.01(1)(a)1. on "valid provision ballots" and canvass completion.
What Happens When the Petition is Properly Filed?	6	Add / Delete / Modify	Reworked for clarity and statutory specificity.	7.08(3)(c) Manual Maintenance	¶1: Added a reference to a valid petition possibly requiring a filing fee as well. Also added a note that independent candidates, with ballot access, must also receive notice of petition filing. ¶3: Removed "in order" for conciseness. Moved the statutory reference up, because that provision of statute specifically prescribes the first portion of this paragraph.
When Does the Recount Begin?	6	Modify	Corrected inverted statutory citations.	Typo/Formatting	These two Wis. Stat. s. 9.01(1) citations were transposed and associated with the wrong sentences.
When Does the Recount Begin?	6	Add	Added statement on petition delivery to candidates.	7.08(3)(c) Manual Maintenance	Given the statutory requirements relating to the delivery of petitions to candidates, specifically that the recount begins the next morning, it is logical to infer that petition delivery must occur immediately when the petition is filed on the last allowable day.

Section	Page	Action Taken	Material	Type of Update	Why?
When Does the Recount Begin?	6	Flag	Highlighted sentence for Commission consideration.	7.08(3)(c) Manual Maintenance	It is unclear why this statement excludes Sunday. Additionally, the county clerks requested that "recommends" be changed to something like "suggests," "evaluate whether," or "delay as little as possible." This suggestion is simply to soften the language, and not make seem like the Commission is firmly "recommending."
Who May Attend the Recount?	8	Add / Delete / Modify	Various changes.	7.08(3)(c) Manual Maintenance	Various items were moved, added, or deleted for clarity and compliance. A review was also performed with the ongoing admin rule efforts in mind, but not yet totally accounted for, given that the rule is unpromulgated.
Who May Attend the Recount?	8	Modify	Recommend de-highlighting the text.	Commission Directives	New additions from 2020 remain highlighted, as staff was then directed. Staff recommend removing the highlights if the Commission wishes to keep the text.
Recount Preparations	10	Add/Delete	Recommended changes.	7.08(3)(c) Manual Maintenance	This seems oddly phrased – the BOC has the statutory authority to determine the recount method(s), and using words like informal/prefers almost makes it sound like the filing officer can overrule the BOC if they disagree. This is also flagged for Commission consideration and possible deletion, because the BOC meeting is a public meeting, and making these decisions outside of canvass/meeting could be subject to challenge and constitute a walking quorum. The Commission could schedule a brief virtual or in-person meeting to discuss if the Commission thinks it important/necessary.
What Does the Board of Canvassers Do?	12	Add / Delete / Modify	Recommended changes.	7.08(3)(c) Manual Maintenance	¶1: Reworded to more closely comply with requirements. Also moved up statement on possible usage of a recorder from later paragraph. ¶3: Citation is deleted, as it does not support the bullets directly. The first sentence is removed as redundant, and the second have been moved up.
Review Absentee Ballot Materials	13,14	Delete	Remove the "Examine Written Absentee Applications" section.	7.08(3)(c) Manual Maintenance	Not required by statute and may give the impression it is. Recommended change by staff and clerk working group.
Review Absentee Ballot Materials	14	Add	Adding suggested language to "Review Rejected Absentee Ballots" section.	7.08(3)(c) Manual Maintenance	Added a statement on what constitutes a defective absentee ballot certificate pursuant to the recount statutes.
Review Absentee Ballot Materials	14	Delete	Remove the word "Defective" from the title "Examine Defective Absentee Ballot Envelopes."	7.08(3)(c) Manual Maintenance	Change "Examine Defective Absentee Ballot Envelopes" to "Examine Absentee Ballot Envelopes." Statute says that the Board of Canvassers should examine all absentee ballot envelopes. While the content found under this title alludes to examining all the envelopes, changing the title of this step would marry the title to the content and minimize confusion.
Review Absentee Ballot Materials	14	Add	Add a reference to each new absentee ballot certificate type.	7.08(3)(c) Manual Maintenance	Add a reference to each of the new absentee ballot certificate types recently approved by the Commission (EL-122, EL-122M, EL-122SVD, EL-122S). This will be one more way to remind officials of the recent change and reference each of the documents for clarity purposes.
Review Absentee Ballot Materials	14	Delete	Delete errant reference to EL-101.	Typo/Formatting	This section refers to the EL-101 twice, including when the text is only referencing the ballot bag/container, and not the Certificate. The first reference has been redlined, because this is not a reference to the Certificate. Another edit was applied to change the name from "Certification" to "Certificate," which is the proper title of the template form.

Section	Page	Action Taken	Material	Type of Update	Why?
Examine Ballot Bag or Container	15	Delete	Deleted footnote.	7.08(3)(c) Manual Maintenance	FN5: 6.86(1)(ar) Except as authorized in s. 6.875 (6), the municipal clerk shall not issue an absentee ballot unless the clerk receives a written application therefor from a qualified elector of the municipality. There are exemptions to the application requirement...SVD voting, etc. That said, nothing in statute requires applications to be on hand or reviewed during recount. Additionally, some applications may be confidential or require some redaction. Finally, some clerks do not perform this process during a recount anyway, and a clerk working group recommended removal of this section, as it "may give candidates the impression that they have the right to review the applications during a recount." This question was raised in Werner v. Dankmeyer (22-CV-555), but was not resolved (i.e. Whether "...Wis. Stat. § 9.01(1)(b)11...provides a right to review election materials," including absentee ballot applications during a recount. The cited provision of statute does note that the processes will be open and materials may be reviewed, and applications may be subject to review under other provisions of law, but that does not mean they need to be on hand and reviewed by recount canvassers. Additionally, staff recommend not citing un-linked and informal opinions of the former agency. The Paulson case also does not support this contention and must also be discussed.
Examine Ballot Bag or Container	15	Delete	Deleted footnote.	7.08(3)(c) Manual Maintenance	FN7: Deleted, moved into the text above, and more correctly stated.
Reconcile Ballot Count	16	Modify	Corrected abbreviated Wis. Stat. s. 9.01 citations.	Typo/Formatting	Two provisions of Wis. Stat. s. 9.01 were not only abbreviated in a slightly confusing manner, they were also improperly cited using parens rather than a period. The full cite was added and hyperlinked.
Reconcile Ballot Count	9	Delete	Remove "...and the number of written applications..."	7.08(3)(c) Manual Maintenance	This is proposed to be deleted in accordance with the analysis in Row 31 above. It is also unclear whether this statement is correct, because the number of applications may not align with the total number of absentee ballots, much less the "probable" number of absentee ballots. Again, some voter types need not submit an application.
Reconcile Ballot Count	16	Highlight	Highlighted sentence for Commission consideration.	7.08(3)(c) Manual Maintenance	This is non-statutory, but a very common sense thing to do, and runs no compliance risk. Simply flagging for the Commission to consider whether it should remain.
Reconcile Ballot Count	16,17	Modify	Footnote deleted and moved to the body.	Typo/Formatting	FN8: This footnote was deleted and moved to the text in the body of the document.
Reconcile Ballot Count	16,17	Modify	Footnote deleted.	Typo/Formatting	FN9: Footnote was removed. The procedures discussed are required and addressed later in this document. FN10, on page 18, is deleted for the same reason.
Reconcile Ballot Count	16	Add/Delete	Various changes.	7.08(3)(c) Manual Maintenance	Various edits made for the purposes of better stating the intent of this section.
Reconcile Ballot Count	18	Add	Added language to conform with statute.	7.08(3)(c) Manual Maintenance	Statute also references "executive director and secretary," and may allow for other individuals. This edit accounts for the fact that the initialing party may be an authorized person who is not the clerk or deputy clerk.

Section	Page	Action Taken	Material	Type of Update	Why?
Reconcile Ballot Count	18	Highlight	Subsection 5, "Review Provisional Ballots," has been highlighted temporarily.	7.08(3)(c) Manual Maintenance	This section was highlighted only to draw the Commission's attention to a specific question for review. A working group of Wisconsin's clerks recommended removal of this section, noting that it is not required by statute, should be optional at the canvassers' discretion, and inclusion of this section in the manual creates a perception that the candidates should view this process as mandatory. WEC staff make no recommendation as to keeping or removing this section, but they are standing by to discuss as may be necessary. The Commission could also opt to make it clear that this process is prudent but not required.
Count the Votes	19	Add	Addition referencing public records.	7.08(3)(c) Manual Maintenance	While non-relevant results need not be included in the BOC report, it may be wise/required to keep them for record or archival purposes.
Reconcile Ballot Count	21	Modify	Fixed the statutory citation format and added hyperlinks.	Typo/Formatting	No statutory citations were added. These changes are only a correction of the formatting.
Reconcile Ballot Count	21	Highlight	The section titled "Compare Duplicate Ballots with Original Ballots" has been highlighted temporarily.	7.08(3)(c) Manual Maintenance	This section was highlighted only to draw the Commission's attention to a specific question for review. A working group of Wisconsin's clerks recommended consideration of the removal of this section, noting that it is not required by statute, should be optional at the canvassers' discretion, and inclusion of this section in the manual creates a perception that the candidates should view this process as mandatory. WEC staff make no recommendation as to keeping or removing this section, but they are standing by to discuss as may be necessary. The Commission could also opt to make it clear that this process is prudent but not required. If the Commission opts to keep the section, it may wish to add similar content to the hand count portion of the manual as well.
Reconcile Ballot Count	23	Modify	Corrected "see Step #8" to say "see Step #9."	Typo/Formatting	There is no step #9 in the manual. This reference should have been to step #8.
Reconcile Ballot Count	23	Modify	Corrected the misspelling of "individuals."	Typo/Formatting	Corrected a misspelling in the first paragraph of subsection 3.
How Does a Candidate or Petitioner Challenge the Recount Results	24	Modify	Fixed the statutory citation format and added hyperlinks.	Typo/Formatting	No statutory citations were added. These changes are only a correction of the formatting.
Conclusion	25	Modify	Updated web address.	Typo/Formatting	Updated the agency's website address from "http" to "https" and ensured the hyperlink is correct.
Appendix Table of Contents	N/A	Modify	Placeholder: New page numbers.	Typo/Formatting	Agency staff will need to update the new page numbers in the Table of Contents once the redlines are accepted and the draft is ready to be finalized.
Appendix Table of Contents	N/A	Modify	Unhighlighted "Public Health Guidance."	Commission Directives	The Commission previously approved public health guidance as an addition to the recount manual in 2020. It was also left highlighted to show which changes had been made from the prior version. All references are unhighlighted and left as potential permanent additions.
Sample Recount Petition	N/A	Modify	Corrected the misspelling of "aggrieved" and flagging the incorrect address.	Typo/Formatting	Pointing out a spelling error, and highlighted the need for an updated WEC address. This likely warrants Commission approval and a new revision date.

Section	Page	Action Taken	Material	Type of Update	Why?
Sample Recount Petition	N/A	Flag	Subsection 4 is flagged for discussion.	7.08(3)(c) Manual Maintenance	The clerks working group recommended removing this as "3." is required by statute, but "4." is not. That is wrong. That statute does require this in the second portion: "...or that another specified defect, irregularity, or illegality occurred in the conduct of the election." This is essentially a second option beyond an allegation of a counting-based mistake or fraud. That said, I am not sure providing more detail in a petition is a bad idea regardless, and legal recommends keeping this section.
Sample Recount Petition for Referendum	N/A	Flag	Subsection 3 is flagged for discussion.	7.08(3)(c) Manual Maintenance	Same concern from the clerk's working group in Subsection 3, and same address issue if we open this draft for revision.
Sample Recount Minutes	N/A	Modify	Added "If Applicable" in reference to absentee ballot application review.	7.08(3)(c) Manual Maintenance	WEC staff recommend keeping the reference to the applications, unless the Commission says application review is mandatory. Otherwise, some municipalities are likely to carry out this process regardless, and keeping the option in the checklist would be beneficial. So, "if applicable" was added to address the clerk working group's concerns.
Checklists	8, 9, 10, 11	Delete	Removed reference to absentee ballot application review in each of the checklist templates.	7.08(3)(c) Manual Maintenance	These references to application review can be removed or edited in accordance with the Commission's decision on the matter in Row 31 above.
Checklists	8, 9, 10, 11	Delete	Potentially remove various references to the review of provisional ballots.	7.08(3)(c) Manual Maintenance	References to review of provisional ballots may be removed or listed as "If Applicable," depending on the Commission's decision above.
Checklists	9, 10, 11	Add	Added references to absentee certificate review in each checklist.	7.08(3)(c) Manual Maintenance	An addition to each "Absentee ballot review:" section is proposed, so that the process now references a review of "all certificates."
Checklists	10	Delete	Remove item "Compare duplicate ballots with original ballots."	7.08(3)(c) Manual Maintenance	Reference to comparing duplicate ballots with original ballots may be removed or edited in accordance with the Commission's decision above.
Two Memos	12, 13, 14, 15, 16, 17, 18	Delete	Remove these memos as appendices to the manual.	Commission Directives	These memos are no longer necessary. The substantive and correct portions have been codified into the manual's text or into guidance issued by the Commission. There are some elements that may otherwise require clarification for compliance purposes, and it is not worth amending old memos for that purpose (e.g. drawdown as required by statute without clarification in the memo).

ELECTION RECOUNT PROCEDURES

January 2024



Wisconsin Elections Commission

P.O. Box 7984
Madison, WI 53707-7984

Phone: (608) 261-2028
FAX: (608) 267-0500
Email: elections@wi.gov
Web:

<https://elections.wi.gov>
~~<http://elections.wi.gov>~~

Table of Contents

Procedures for Requesting a Recount	1-3
Who May Request a Recount?	1
How is a Recount Requested?	1
What is a Recount Petition?	1-2
When is a Filing Fee Required?	2
Campaign Finance Note	3
Where Does the Petitioner File a Recount Petition?	3
When Must the Petition Be Filed?	3
What Happens When the Petition is Properly Filed?	4
Procedures for Conducting the Recount	4-13
When Does the Recount Begin?	4
Who Conducts the Recount?	4
Who May Attend the Recount?	4-5
Recount Preparations	5-6
What Does the Board of Canvassers Do?	6
How Does the Board of Canvassers Conduct the Recount?	6-13
After the Recount	14
What Does the Board of Canvassers Do After the Recount?	14
How Does a Candidate or Petitioner Challenge the Results?	14
<hr/>	
Appendix	
Sample Forms	1-6
Recount Petition	1
Recount Petition for Referendum	2
Order for Recount	3
Public Notice of Recount	4
Acceptance of Service	5
Recount Minutes	6
Recount Fee Scenarios	7
Recount Checklists	8-11
Supplies and Materials	8
Paper Ballot	9
Optical Scan	10
Direct Recording Electronic (DRE)/Touch Screen Voting	11
Commission Staff Memorandum: Construction of Wis. Election Stats.	12-15
Directory vs. Mandatory Application of Statutes	12-13
Election Official Error vs. Voter Error	14
Board of Canvassers Discretion	14-15
Public Health Guidance	16

Introduction

Elections are often decided by a few votes. In many cases they are decided by one or two votes out of the several hundred or even several thousand votes that are cast. An election may even end in a tie vote. These circumstances encourage a candidate, typically the one who loses the election, to have all the ballots counted again to assure all legal votes are counted properly, any illegal votes are not counted, and the proper procedures for conducting the election were followed by the election officials.

The process of counting the ballots again is known as a recount. There is no automatic recount. The procedures for requesting and conducting a recount are spelled out in the election laws. A recount is the exclusive remedy to test in court the right of a candidate to hold office based on the number of votes cast at an election.

This manual explains the statutory requirements for requesting a recount, attempts to explain ambiguity in those statutes, expands on the statutory requirements with recommended procedures for conducting a recount, and contains sample forms for use during the recount. Additionally, the Appendix to this manual includes a Commission staff memorandum on the construction of Wisconsin's election statutes which in some cases can influence the advice rendered by Commission staff to board of canvassers conducting a recount. The advice is rendered on a case-by-case basis and is intended to "give effect to the will of the electors" when making decisions during a recount. This memorandum also outlines the discretion board of canvassers may exercise when making decisions during a recount and provides analysis of situations where the board of canvassers considers if an error in the election process was made by a voter or an election official and how that difference impacts the tallying of votes.

This information is prepared by the Wisconsin Elections Commission ("WEC" or "Commission") pursuant to the requirements of . If you have any questions about the recount process, please contact Commission staff through any of the methods below:

Phone: 608-261-2028
Toll Free: 866-VOTE-WIS
Fax: 608-267-0500
Email: elections@wi.gov

Procedures for Requesting a Recount

Who May Request a Recount?

~~Any candidate voted for at any election who is an aggrieved party may petition for a recount of the election, and Recounts can be requested by any candidate voted for at any election who is an aggrieved party, or by any~~ Any individual who voted at a referendum election may ~~request petition for~~ request petition for a recount of the referendum results. ~~There is no automatic recount in Wisconsin, even if the unofficial results are extremely close.~~

~~An aggrieved candidate is defined differently depending on the total number of votes cast for an office. If there are 4,000 or fewer total votes cast for an office, a candidate who trails the leading candidate by no more than 40 votes is an aggrieved candidate, but if there are more than 4,000 votes cast for an office, a candidate who trails the leading candidate by no more than one+ percent of the total votes cast for that office is an aggrieved candidate. Wis. Stat. § 9.01(1)(a)1. & 9.01(1)(a)5.~~

~~A leading candidate is every individual whose vote total would entitle the individual to election or nomination to the office sought, which accounts for contests in which more than one person may be elected. Wis. Stat. § 9.01(1)(ag)5. If more than one office of the same type is to be filled in an election from the same territory, the number and percentage of votes cast under this paragraph shall be determined by first dividing the total number of votes cast for the office by the number of offices being filled at the election from the same territory. *Id.* Only an aggrieved candidate, defined as a candidate for an office whose total votes were within 1% of the winner's vote total when at least 4,000 votes were cast or within 40 votes of the winner's total if fewer than 4,000 votes were cast may request a recount of results for an office. Wis. Stats. §§ 9.01(1)(a)1 & (1)(a)5. There is no automatic recount, even if the unofficial results are extremely close.~~

How is a Recount Requested?

A recount is requested by filing a valid, sworn petition with the filing officer or, in the case of a referendum, with the clerk of the jurisdiction in which the referendum is called, along with the filing fee, if required. ~~For the office of the president, a petition for recount must be filed not earlier than the completion of the canvass and not later than 5 p.m. on the 1st business day following the day on which the WEC receives the last county board of canvassers statement. For all other offices, a petition for recount must be filed not earlier than the completion of the canvass and not later than 5~~

~~p.m. on the 3rd business day following the last meeting day of the board of canvassers determining the result for the office/referendum. Wis. Stat. § 9.01(1)(a)1, & 9.01(1)(ar)1. & 2.~~

What is a Recount Petition?

A recount petition is a sworn statement requesting that the votes at an election be counted again, with the petitioner and setting out the reasons why the ballots should be recounted. A recount petition must be filed with the filing officer, along with any applicable fee.

The recount petition must state the following information:

- ~~1. The petitioner must specifically request a recount or otherwise clearly indicate they desire a recount of particular election results. See Wis. Stat. § 9.01(1)(a)1.~~

2.1. That ~~the petitioner must indicate he or she was is~~ either an aggrieved candidate (defined above and here: [Wis. Stat. § 9.01\(1\)\(a\)5](#)) for the office in question ~~Wis. Stat. § 9.01(1)(a)5~~. If the results of a referendum election are at issue, the petition must state that the ~~petitioner~~ or a voter who voted on the referendum question in question. [Wis. Stat. § 9.01\(1\)\(a\)2.a & c](#).

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3.2. The basis for requesting the recount. This can consist of a ~~general~~ statement that the petitioner ~~is informed and~~ believes that a mistake or fraud was committed in a specified ward or municipality in the counting and return of the votes cast for the office ~~or upon the referendum;~~ or the petitioner may state that another specified ~~or more specific grounds, such as a particular~~ defect, irregularity, or illegality ~~occurred~~ in the conduct of the election; ~~may be listed in the petition~~. The petitioner shall state if this information is based on personal knowledge of the petitioner or if the petitioner believes the information to be true based on information received from other sources. [Wis. Stat. § 9.01\(1\)\(a\)2.b](#).

4.3. The ward or wards to be recounted.¹ If a municipality consists of only one ward, the petition

¹ If a candidate petitions for a recount in part, but not all, of the wards or municipalities within a jurisdiction or district, the opposing candidate may file a petition for a recount in any or all of the remaining wards or municipalities. The latter petition must be filed not later than 5:00 p.m. two days after the board of canvassers completes the first recount. The board of canvassers convenes at 9:00 a.m. on the next business day to count the remaining wards or municipalities. This right also applies to a referendum election. Any elector who voted at the election may petition to recount the remaining wards or municipalities in a referendum election. [Wis. Stat. § 9.01\(4\)](#).

need only list the municipality in which the recount is desired. If all wards in a municipality, county or district are to be recounted, the petition may list the municipality, county or district without specifying each ward to be recounted. The petitioner may also state “all wards” if the petitioner wants the entire election recounted. If no ward specifications are indicated, the filing officer will assume that all wards are included. [Wis. Stat. § 9.01\(1\)\(a\)3](#).

~~A-The petition must be verification-verified, meaning that it is~~ signed under oath before a person authorized to administer oaths. The verification must state that the matters contained in the petition are known to the petitioner to be true except for allegations stated on information and belief, which the individual believes to be true. See Sample Recount Petition ([EL-186 or EL-1876R](#)).

If a recount petition is not filed in the proper form, or not accompanied by the filing fee (if required) by the filing deadline, the petitioner loses his or her right to a recount of the election. See Wis. Stats. §§ [9.01\(1\)\(a\)2](#) & [\(1\)\(ag\)](#). A sample recount petition ([EL-186 or EL-187](#))(~~EL-186 or EL-186R~~) is available in the Appendix.

After filing the recount petition, the petitioner may amend the petition. This may be done to include information discovered as a result of facts gathered and determined by the board of canvassers during the recount. If the petitioner wants to amend his or her petition, the petitioner must file a motion to amend the petition with the board of canvassers as soon as possible after the petitioner discovers, or should have reasonably discovered, the new information, and show that the petitioner was unable to include the information in the original petition. [Wis. Stat. § 9.01\(1\)\(a\)4](#).

When is a Filing Fee Required?

Determining if a filing fee is required depends on the total votes cast for the office² and the difference between the total votes cast for the leading candidate and the total votes cast for the petitioner. ~~The “leading candidate” is typically the candidate who won the election. However, i~~In an election where more than one candidate is elected to the same office, or in a primary election when two or more candidates are nominated, the “leading candidate” is the person who received the fewest votes ~~that would still entitle the candidate to election or nomination to office, but is still elected or nominated~~; not the candidate with the most votes. When more than one candidate is elected or nominated from the same territory, the number and percentage of votes cast is calculated by first dividing the total votes cast for the office by the number of candidates elected or advancing offices being filled at the election from the same territory. [Wis. Stat. § 9.01\(1\)\(ag\)5](#). Please see “Recount Fee Scenarios” in the Appendix for an example of how to determine if a filing fee is required.

If 4,000 or fewer votes are cast:

No fee is required if the difference in the total votes cast between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is less than 10. If the difference is at least 10 votes, a filing fee is required.

If more than 4,000 votes are cast:

No fee is required if the difference between the leading candidate and those cast for the petitioner or between the affirmative and negative votes cast at a referendum is 0.25% or less. If the difference is greater than 0.25%, a filing fee is required.

When a filing fee is required, the cost of the recount should be estimated by the filing officer.

²~~In an election in which more than one office of the same type is to be filled from the same territory, the total votes cast for the office is determined by dividing the total number of votes cast for the office by the number of offices to be filled. The difference between the total votes cast for the leading candidate and the petitioner is divided by the total votes cast~~

| for the office to calculate the percentage difference to determine when a fee is required. [Wis. Stat. § 9.01\(1\)\(ag\)5.](#)

including the actual cost incurred by the Wisconsin Elections Commission to provide services for performing the recount, and pre-paid by the petitioner in cash or in another form of payment acceptable to the filing officer at the time of filing. [Wis. Stats. §§ 9.01\(1\)\(ag\)2 and \(1\)\(ag\)3.](#)

If the recount results in the petitioner ~~being elected~~ [becoming a leading candidate](#) or a reversal of the outcome of a referendum ~~or the recount results in a difference in the votes cast that is at or above the threshold~~ [threshold for paying the fee](#), the filing fee shall be refunded to the petitioner within 45 days after the board of canvassers makes its determination in the recount. If the results of the recount do not change the outcome of the election, or the recount results in a difference in the votes cast that is below the ~~threshold~~ [threshold](#) for paying the fee, the petitioner shall pay any balance owing toward the actual cost of the recount within 45 days after the filing officer provides the petitioner with a written statement of the amount due. [Wis. Stat. § 9.01\(1\)\(ag\)3m.](#)

Campaign Finance Note:

Per Wis. Stat. § 11.1104(9), “Contributions used to pay legal fees and other expenses incurred as a result of a recount under s. 9.01” are not subject to contribution limits. These contributions may be collected from the time of the initial recount petition has been filed until the recount process ends. Legislative campaign committees and political parties are not subject to contribution limits, and can give unlimited amounts to candidate committees. ~~H~~ however, reporting requirements still apply. For information regarding the campaign finance laws, please contact the Wisconsin Ethics Commission (<https://ethics.wi.gov/Pages/AboutUs/ContactUs.aspx> ~~http://ethics.wi.gov/content/contact-us~~).

Where Does the Petitioner File the Recount Petition?

The petitioner files the recount petition with the filing officer with whom nomination papers or a declaration of candidacy are filed for that office. The filing officer for any federal or state office or referendum is the Wisconsin Elections Commission. The filing officer for any county office or referendum is the county clerk. The filing officer for a municipal office or referendum is the municipal clerk or the board of election commissioners. The filing officer for a school board office or referendum is the school district clerk. [Wis. Stats. §§ 8.10\(6\)\(d\) & 9.01\(1\)\(ar\)1.](#)

When Must the Petition be Filed?

If a municipal or county board of canvassers determines the election results, the time frame for filing is not earlier than the completion of the canvass [of all valid provisional votes](#) for the election and not later than 5:00 p.m. on the third business day after the last meeting day of the [last](#) board of canvassers which ~~makes a determines determination following canvassing of all valid~~ [provisional ballots for](#) the election or referendum results. [Wis. Stat. § 9.01\(1\)\(a\)1.](#)

If the Wisconsin Elections Commission Chairperson or designee determines the election or referendum result, the petition must be filed no earlier than the last meeting day of the last county board of canvassers to make a statement in the election or referendum and no later than 5:00 p.m. on the third business day after the Wisconsin Elections Commission receives the last statement from the county board of canvassers. [Wis. Stat. § 9.01\(1\)\(a\)1.](#)

For an election for President of the United States, the recount petition deadline is the 5:00 p.m. on the first business day after the Wisconsin Elections Commission receives the last statement from a county board of canvassers for the election.

What Happens When the Petition is Properly Filed?

Upon receipt of a valid recount petition, and once the fee (if applicable) has been paid, the filing officer shall prepare a public notice of the recount (see Appendix for an example) pursuant to Wis. Stat. § 19.84 describing when and where the recount will be held. The filing officer shall send a copy of the notice to the board of canvassers and deliver a copy of the petition and public notice to all candidates whose names were listed on the ballot for the same office. The Wisconsin Elections Commission recommends that the filing officer also deliver the notice to any registered write-in candidates. In a partisan primary, candidates from all parties for the same office, including independent candidates with ballot access, must be notified by the filing officer. A candidate or agent designated by the candidate may personally accept delivery of the copy of the petition. Upon delivery, the candidate or agent shall be required to sign a receipt (see Appendix). If a candidate or agent does not personally accept delivery, the copies shall be given promptly to the sheriff. The sheriff shall promptly serve the copies on the candidates without fee. Wis. Stat. § 9.01(2).

The petitioner and other candidates are encouraged to obtain legal counsel to represent them in any recount proceedings. Wis. Stat. § 9.01(3). The board of canvassers should also make arrangements to obtain legal advice as needed during the recount proceedings. The Commission staff may also be made available via phone during the recount upon request.

Please note that the Wisconsin Elections Commission should be notified of all recounts. In the event of a recount for state or federal office involving more than one county, the boards of canvassers shall consult with the Commission staff ~~in order~~ to ensure that uniform procedures are used to the extent practicable. Wis. Stat. § 9.01(10). The Commission staff will make arrangements for a teleconference through the respective county clerks prior to beginning the recount. Candidates will be invited to participate and the teleconference will be open to the public. ~~Wis. Stat. § 9.01(10)~~.

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Procedures for Conducting the Recount

When Does the Recount Begin?

The recount begins no earlier than 9 a.m. on the day following delivery of notice to all candidates and no later than 9 a.m. on the day following the last day for filing the recount petition. Wis. Stat. § 9.01(1)(b) ~~Wis. Stat. § 9.01(1)(ar)3~~. This requires delivery of a valid petition to all candidates the day the petition is filed if it is filed on the last allowable day. In a recount ordered by the Wisconsin Elections Commission, the board of canvassers shall convene no later than 9 a.m. on the third day following receipt of the order by the county clerk. Wis. Stat. § 9.01(1)(ar)3 ~~Wis. Stat. § 9.01(1)(b)~~. If the following morning is a Saturday (or holiday) the Wisconsin Elections Commission recommends that the board of canvassers begin the recount on the Saturday (or holiday).

Who Conducts the Recount?

The board of canvassers that determined the original election result conducts the recount, except for state and federal elections. For state and federal elections, the county boards of canvassers for the counties in which the contested votes are cast conduct the recount. The Wisconsin Elections Commission recommends that the board of canvassers be composed of the same people who initially canvassed the election results. However, in the event one of the original members is unavailable when the recount is scheduled to begin, other qualified individuals may be appointed to fill the temporary vacancy. Wis. Stats. §§ 7.53(1)(b), (2)(a), 7.60(2). If a member of the board

| of canvassers is unavailable for the recount, the clerk should be notified immediately, and a list of qualified replacements composed before the recount begins. The minutes of the recount should reflect any change in canvass board members and the reason for the substitution.

The board of canvassers may hire tabulators who work at the canvass board's direction and who assist in administering the recount. Tabulators may assist the board of canvassers in conducting the recount, but only members of the board of canvassers are competent to make any determination as to the validity of any vote tabulated. [Wis. Stat. § 9.01\(5\)\(b\)](#). The Wisconsin Elections Commission recommends that, ~~when where~~ possible, the election inspectors who worked the polls on Election Day serve as tabulators.

Who May Attend the Recount?

~~Any person may attend the recount. This includes the petitioner, the all opposing candidates, and all interested persons are entitled to be present in person and by counsel to observe the proceedings, their representatives or legal counsel, media representatives, and any other interested persons. Wis. Stat. § 9.01(3). If there are multiple representatives from a single campaign, the Commission recommends that a single representative shall be identified as the designated primary representative to the board of canvassers. Secondary representatives may ask clarifying questions of recount staff and request that ballots be set aside for further review by the board of canvassers, but any challenges or objections for the record must be made by the designated primary representative. The recount statute does not specifically dictate how many individuals must be allowed to observe a recount, but it is clear that the ballot and materials must be available for candidates and their representatives to view and offer any objections to a ballot being counted. Wis. Stat. § 9.01(1)(b)11.~~

The canvass board members and the tabulators are the only persons who may handle and touch the ballots and other election materials. The board of canvassers must, however, allow the candidates and their representatives and/or legal counsel to view and identify the election materials, [as well as object to the counting of any ballot. Wis. Stat. § 9.01\(1\)\(b\)11](#). [The Commission recommends that the petitioner, candidates, and their authorized representatives and counsel wear a badge or nametag that clearly identifies them as a person who can object to the counting of a ballot.](#) Public health guidance should be considered by the board of canvassers when setting up the recount location and observation areas. ~~Social distancing, the use of facecoverings and hand hygiene should all be clearly communicated to individuals that will be attending the recount in person to ensure the safety of everyone involved in recount. (See Public Health Guidance starting on Page 16 of the Appendix to this manual).~~ Any challenges to the procedure established by the board of canvassers regarding observation should be decided by the board and documented in the minutes. The optional use of a live video feed to provide greater transparency and minimize the number of individuals observing in person should also be considered.

~~The board of canvassers shall exercise reasonable control over the conduct of the recount to assure that the canvassers and tabulators do not experience interference from any person observing the recount. All persons who are not under the supervision of the board of canvassers are considered observers and are subject to the observer guidelines established by the Wisconsin Elections Commission in this manual and the board of canvassers. To clearly identify candidate representatives, all observers shall wear badges or nametags identifying themselves and their role (candidate, media, etc.). This procedure allows individuals assisting the board of canvassers to quickly identify candidate representatives who are provided the ability to view and identify ballots and election materials for purposes of raising an objection to the counting of a ballot with the board of canvassers.~~

The board of canvassers may establish marked observer areas³ and ask that observers remain within those areas unless otherwise permitted by the board of canvassers. If there is not sufficient

room for all observers to view the election materials, preference shall be given to candidates or

³ Unlike observation areas in the polling place, recount observations areas are not required to be placed at any specific distance as long as the candidates and their representatives can view and identify the election materials and the observers are not disruptive to the recount process.

their representatives. The use of video or still cameras inside the recount room is permitted unless it is disruptive or interferes with the recount. The board of canvassers may enforce reasonable restrictions on items brought into the recount room, such as marking devices, food, or drink.

If any observer engages in disruptive behavior that in the opinion of the board of canvassers threatens the orderly conduct of the recount, the board of canvassers shall issue a warning and if the observer does not cease the offending conduct, order the observer's removal.

Recount Preparations

Unless a court orders otherwise, the board of canvassers may decide to either hand-count or use voting equipment to tabulate the ballots. The board of canvassers may also choose to hand-count certain wards, while using voting equipment to tabulate other wards. [Wis. Stats. § 5.90\(1\) & \(2\)](#).

If voting equipment is used, it should be programmed to read and tally only the results for the contest to be recounted. ~~Filing officers should be prepared for a board of canvassers to select either machine counting or hand counting of votes. Prior to the recount, the filing officer should consult individually with board of canvass members to inquire how each prefers the ballots be tabulated. Based on that informal polling, the filing officer can prepare for the recount.~~ The formal decision on the tabulation method to be used should be made publicly when the recount begins so as to provide an opportunity for candidates or their representatives to object.

The filing officer administering the recount should ensure that all the supplies and materials needed for the recount have been acquired prior to the start of the recount. The filing officer should also acquire the necessary original election materials for each reporting unit to be recounted. A sample checklist of materials and supplies is available in the Appendix.

If the necessary materials are not on hand when the recount is scheduled to begin, the Wisconsin Elections Commission recommends that the board of canvassers convene by the deadline set by statute, document what materials are missing, what steps have been taken to procure them for the record, and adjourn until the materials are available.⁴ In the event that the board of canvassers has the required materials for some, but not all the wards to be recounted at the time they are scheduled to begin the recount, the board of canvassers may begin the recount with those wards for which it has the required materials while the missing materials are being obtained.

The Wisconsin Elections Commission recommends that the board of canvassers note in the minutes if proper notice of the recount was given to all candidates. Also, the board of canvassers should note if the recount was properly noticed as a public meeting under [Wis. Stat. § 19.84](#).

The filing officer may choose to conduct an administrative review of the recount materials prior to the recount commencing to identify possible errors or anomalies (e.g., reconciliation of poll books). If any such review was conducted by the filing officer prior to the recount, the filing officer shall publicly present a full report to the board of canvassers of any errors or anomalies identified as well as any corrective action taken. The board of canvassers may choose to adopt or reverse any decision made by the filing officer during the administrative pre-recount review.

What Does the Board of Canvassers Do?

The duty of the board of canvassers is to recount the votes cast for the office in question and to correct the errors, if any, that were made at the original determination of the election results. [Wis. Stat. § 9.01\(1\)\(b\)11](#).

|
If necessary, the board of canvassers may also issue subpoenas to compel witnesses or documents
for

|
⁴ The Board of Canvassers may not adjourn for more than one day at a time. [Wis. Stat. § 9.01\(1\)\(ar\)3.](#)

the recount.

The board of canvassers is also required to ~~make a~~keep complete ~~written record~~minutes of the ~~recount~~all proceedings before the board of canvassers, including a record of any objection, offer of evidence, exhibit, and finding of fact. [Wis. Stat. § 9.01\(5\)\(a\)](#). While a court reporter is not required, an audio recorder is recommended to ensure detailed minutes are kept. A sample format for the recount minutes can be found in the Appendix.

Each party to a recount must be given an opportunity to object and provide offers of evidence on:

- all objections to the recount itself,
- the composition of the board of canvassers,
- the procedures followed,
- any ballot cast at the election, and
- any other issues presented to the board of canvassers during the recount.

~~[Wis. Stat. § 9.01\(5\)\(a\)](#)~~

~~Any objections or offers of evidence, the canvass board's decisions, and any findings of fact regarding any irregularities discovered during the recount, must be recorded in the written minutes of the recount proceedings. While a court reporter is not required, an audio recorder is recommended to ensure detailed minutes are kept. A sample format for the recount minutes can be found in the Appendix.~~

How Does the Board Conduct the Recount?

The board of canvassers conducts the recount by following the procedures in Wis. Stats. §§ [5.90](#); [7.50](#); [7.51](#); & [9.01\(1\)\(b\)](#). Please see the Appendix for checklists specific to the use of each type of tabulation method as well as the Commission staff memorandum on the construction of Wisconsin's election statutes and the discretion a board of canvassers may exercise when making decisions during the recount. These procedures are conducted separately for each municipality and reporting unit within the municipality. The board of canvassers shall announce each reporting unit before beginning the recount process for that reporting unit. Again, a reminder that the board of canvassers must keep complete minutes of each step completed, any objections made, any evidence introduced, any findings of fact made, and any decisions of the board of canvassers, including the reasoning behind the decision.

1. Reconcile Poll Lists – [Wis. Stat. § 9.01\(1\)\(b\)1.](#)

The board reconciles the two poll lists and any supplemental lists to confirm the lists record the same voters, the same total number of electors who voted in the ward or municipality, and that the same supplemental information is noted. The canvassers determine from the poll lists the total number of voters, the number of absentee votes recorded, and identify any irregularities appearing on these lists. The canvassers note in the minutes the total number of persons who voted, how many absentee votes were recorded, and any irregularities found on the poll lists.

2. Review Absentee Ballots and Materials – [Wis. Stat. § 9.01\(1\)\(b\)2.](#)

□ Determine Number of Absentee Voters

The Wisconsin Elections Commission recommends that the board of canvassers determines the

number of absentee voters by reviewing the poll lists, the absentee ballot certificate envelopes, the Inspectors' Statement (EL-104), and the absentee ballot log (EL-124).

~~Examine Written Absentee Applications~~

The board of canvassers then reviews the written applications for absentee ballots and the list of absentee voters maintained by the municipal clerk. There should be a written application for each absentee ballot envelope except those issued in person in the clerk's office. In the case of indefinitely confined, a designation on a list prepared by the municipal clerk is sufficient if it indicates that an absentee ballot was delivered to and returned by an absentee voter.

Do not reject an absentee ballot if there is no separate written application.⁵ Because of the variety of reasons that the board of canvassers may not be able to locate a specific written application, and the likelihood that a voter may be improperly disenfranchised, the board of canvassers should not reject an absentee ballot due to the lack of a written application. The board of canvassers records in the minutes the number of written absentee ballot applications on file as well as an explanation of any discrepancy, but any request to reject a ballot on this basis should be determined by a reviewing court rather than the board of canvassers.

❑ *Review Rejected Absentee Ballots*

The board of canvassers examines the rejected absentee ballot certificate envelopes contained in the brown carrier envelope (EL-102). Rejected absentee ballot certificate envelopes are identified by the election inspectors on eElection nNight and marked "rejected." The reason for the rejection should be noted on the Inspectors' Statement (EL-104).

For recount purposes, an absentee ballot certificate envelope is defective "only if it is not witnessed or if it is not signed by the voter, or if the certificate accompanying an absentee ballot that the voter received by facsimile transmission or electronic mail is missing." Wis. Stat. § 9.01(1)(b)2. The board of canvassers should make their own determination for each rejected absentee ballot certificate envelope.⁶ Any improperly rejected ballots should be marked and placed into the pool of ballots to be counted. If the number of voters is increased under this procedure the change should be recorded in the minutes. Any errors by election inspectors in rejecting absentee ballots should be documented in the minutes, along with the corrective action taken.

❑ *Examine ~~Defective~~ Absentee Ballot Envelopes*

The board of canvassers examines the used absentee ballot certificate envelopes (EL-122, EL-122M, EL-122SVD, EL-122S) contained in the white carrier envelope (EL-103). If the board finds any defective⁷ absentee ballot certificate envelope not identified on eElection nNight, they it should be marked as defective, assigned a serial number, set aside, and properly preserved. A notation, including a description of the defect, should be made in the minutes.

The number of voters determined at the beginning of the recount is reduced by the total number of absentee ballots set aside under this procedure. This adjusted number is noted in the minutes and used whenever the number of voters is referred to during the recount. Do not remove ballots from the pool yet at this stage. See stage 4, below.

3. Examine Ballot Bag or Container – Wis. Stat. § 9.01(1)(b)3.

The board of canvassers examines the ballot bag or ballot container (~~EL-101~~) to determine that it has not been tampered with, opened, or opened and resealed. The board of canvassers should verify that the tamper-evident seal matches the serial number on the Ballot Container

⁵ See Informal Opinion of Staff Attorney Re: Recount of the Town of Walworth Recall Election (11/18/02); but see also Wis. Stat. § 6.84(2); Walter V. Lee v. David Paulson, 2001 WI App 19.

⁶ See Wis. Stat. § 6.88(3) for procedures and guidance on accepting or rejecting absentee ballot certificate envelopes.

⁷ ~~An absentee ballot is defective only if it is not witnessed, the witness did not provide an address, it is not signed by the voter, or if the certificate envelope or the certification language is missing. Wis. Stat. § 9.01(1)(b)2.~~

Certification (EL-101) and the Inspectors' Statement (EL-104). The Wisconsin Elections Commission recommends the board of canvassers investigate any irregularities or possible tampering with the ballots and note its findings in the minutes.

4. Reconcile Ballot Count – Wis. Stat. § 9.01(1)(b)4.

□ Ballot Count – Wis. Stat. § 9.01(1)(b)4.a.4(a)

The board of canvassers opens the ballot bag or ballot container and removes the contents. The canvassers or tabulators count the number of ballots in the ballot bag, excluding any ballots that were set aside and not counted by the election inspectors on eElection nNight under the provisions of Wis. Stat. § 7.51(2). These “set aside” ballots should have been marked and bundled by the election inspectors on eElection nNight.

The board of canvassers reviews all ballots marked rejected, defective, and objected to, in order to decide whether such ballots were correctly categorized when the ballots were first examined after the election.

□ Separate Probable Absentee Ballots – Wis. Stat. § 9.01(1)(b)4.b.4(b)

The board of canvassers separate all “probable absentee ballots”⁸ from the other ballots. The board of canvassers shall presume that a ballot initialed only by the municipal clerk, executive director of the board of election commissioners, deputy clerk or secretary is an absentee ballot. Wis. Stat. § 9.01(1)(b)4.b. The number of probable absentee ballots should equal the number of properly completed certificate envelopes (as determined by the board of canvassers in step 2 above), the number of absentee ballots recorded on the registration list on eElection Night.night, and the number of written applications. Any discrepancies should be recorded in the minutes.

□ Reconciling the Number of Ballots with the Number of Voters⁹ – Wis. Stat. § 9.01(1)(b)4.b.

If the number of voters is greater than or equal to the number of ballots, record that information, but skip this step. Only engage in the following procedure in the situation whereif the number of ballots exceeds the number of voters should the board of canvassers engage in the following procedure.

If the board of canvassers previously determined that any open absentee ballot certificate envelopes were defective, the board of canvassers must draws at random, without inspection, from the pool of probable absentee ballots; the number of ballots equal to the number of envelopes that have been determined defective. If the board of canvassers finds more defective absentee ballot envelopes than probable absentee ballots, the board of canvassers shall set aside all probable absentee ballots. The probable absentee ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers notes in the minutes the steps taken under this procedure and the results determined. Wis. Stat. § 9.01(1)(b)4.b.

If the number of ballots still exceeds the number of voters, the board of canvassers or the tabulators shall place all the ballots face up to check for blank ballots. Any blank ballots (ballots which have not been marked for any office) shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers should record this action in the minutes. Wis. Stat. § 9.01(1)(b)4.c.

⁸ The board of canvassers shall presume that a ballot initialed only by the municipal clerk, executive director of the board of election commissioners, deputy clerk or secretary is an absentee ballot. Wis. Stat. § 9.01(1)(b)4.b.

⁹ See Appendix pgs. 12-15 for discussion of the Board of Canvassers retaining some discretion to ensure that statutes are applied to “give effect to the will of the electors.”

If the number of ballots still exceeds the number of voters after removing all blank ballots, the board of canvassers shall place all ballots face down to check for initials. Any ballots not properly initialed by two inspectors or any probable absentee ballots not properly initialed by the municipal clerk, ~~or~~ deputy clerk, or other statutorily authorized official are set aside. The board of canvassers must, without inspection, randomly draw from the improperly initialed ballots as many ballots as are necessary to reduce the number of ballots to equal the number of voters determined to have voted on election day, less any defective absentee ballot certificate envelopes. Any ballots removed for lack of proper initials shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The board of canvassers should record this action in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.d.](#)

If the number of ballots still exceeds the number of voters, the board of canvassers places the remaining ballots in the ballot bag and randomly draws, without inspection, the number of ballots equal to the number of excess ballots.¹⁰ These ballots shall not be counted, but shall be marked as to the reason for their removal, set aside and properly preserved. The actions taken under this procedure are recorded in the minutes. [Wis. Stat. § 9.01\(1\)\(b\)4.e.](#)

When the number of ballots equals the number of voters or if the number of voters exceeds the total number of ballots, the board of canvassers returns the ballots to the ballot bag or container and thoroughly mixes the ballots. [Wis. Stat. § 9.01\(1\)\(b\)5.](#)

5. Review Provisional Ballots

The board of canvassers shall examine the Inspectors' Certificate of Provisional Ballots (EL-108), Provisional Ballot Reporting Form (EL-123r), Provisional Ballot Certificate envelopes (EL-123), and Statement of the Municipal Board of Canvassers (EL-106AP) to determine if provisional ballots were correctly processed. The board of canvassers should determine if all ballots for voters providing the required information¹¹ have been included in the original result. The board of canvassers shall record any discrepancies in the minutes. [Wis. Stat. § 6.97.](#)

6. Count the Votes

~~When counting paper or optical scan ballots, questions often arise concerning the intent of the elector. Election officials have a duty to attempt to determine voter intent and give effect to that intent if it can be determined. Election officials are expected to use common sense to determine the will of an elector based on the marks made by the elector on the ballot. The decisions of the election inspectors may be reviewed by the board of canvassers conducting the recount. Wis. Stats. §§ 7.50, 7.51, 7.60. Even if an elector has not fully complied with the provisions of the election law, votes should be counted as intended by the elector to the extent that the elector's intent can be determined. Wis. Stat. §§ 5.01(1), 7.50(2). The Wisconsin Elections Commission has a manual titled "Counting Votes," which is designed to assist election officials in determining voter intent. A copy of the "Counting Votes" manuals ~~are~~ available on the agency website and should be reviewed by the board of canvassers prior to the recount. The exact steps for tabulating the votes will vary depending on the method or combination of~~

¹⁰ See Appendix pgs. 12-15 for discussion of the Board of Canvassers retaining some discretion in potential drawdown scenarios to ensure that statutes are applied to "give effect to the will of the electors." One factor considered, is whether an error can be determined and whether the error was committed by the voter or the election official.

¹¹ See [Wis. Stat. § 6.97](#) and [Wis. Admin. Code EL § 3.04](#).

methods of tabulation selected by the board of canvassers:

1) Hand Count

The Wisconsin Elections Commission recommends that hand counts be conducted using teams of at least two tabulators. These tabulators will double-check each other's work throughout the process to ensure that an accurate count is maintained.

☐ *Sort Ballots by Candidate*

Each tabulation team should begin by sorting the ballots into stacks: One stack for each candidate (ballots that clearly indicate a vote for a ballot candidate or a valid write-in candidate) and one stack for ballots where no vote may be counted (defective ballots, votes for invalid write-in candidates, etc.). Candidate representatives should be given the opportunity to review each ballot as it is sorted, and may request that the tabulators set aside questionable ballots for closer examination and determination of voter intent by the board of canvassers.¹² The board of canvassers may consult with its legal counsel or Wisconsin Elections Commission staff regarding any questionable ballots. The Wisconsin Elections Commission recommends that any such consultation should be recorded in the minutes.

☐ *Create Stacks of a Fixed Number*

Set aside the stack of ballots for which no vote can be counted. For each stack of ballots marked for a candidate, each tabulator should create sub-stacks of a fixed number (e.g., 25 ballots) with a remainder stack for any number left over from creating the full-size stacks. Each stack should be double-checked by a second tabulator to ensure the stack contains exactly the number expected.

☐ *Tally Stacks to Determine the Total Vote*

The board of canvassers then carefully counts the number of stacks for each candidate. The counts should be recorded separately by two individuals on two clearly-labeled tally sheets (EL-105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals are recorded in the minutes.

A reconciliation of the ballots for which no vote could be counted should be recorded in the minutes. This documentation should list the reasons the ballots could not be counted, and the number of ballots not counted for each reason.

2) Optical Scan

If an optical scan tabulator is used, the Wisconsin Elections Commission recommends that where possible the tabulator should be programmed to only tally the results for the contest to be recounted. If the tabulator is not reprogrammed to tally only the contest to be recounted, the Wisconsin Elections Commission recommends that the counts for other contests be separated, set aside and preserved. The recounted results for the other contests should not be included in the board of canvassers report of recount results but may need to be preserved for public records or other purposes.

Note: The original memory device for the voting equipment from eElection eDay cannot be cleared

¹² Please refer to the [Counting Votes Manual](#) on the WEC website for detailed rules and examples of when to count or

not count a mark as a vote.

and reprogrammed for use at the recount, so an alternative memory device must be acquired for use at the recount. [Wis. Stats. §§ 7.23\(1\)\(g\) & \(2\)](#).

❑ *Examine the optical scan tabulator*

The board of canvassers shall make a record of the number of the tamper evident seal, protective counter, or other device, if any, before opening any of the voting equipment. The board of canvassers examines the electronic voting equipment to determine that any other tamper evident seals are intact and match the log maintained by the election inspectors and the municipal clerk. The board of canvassers notes in the minutes any irregularities or possible tampering with the device. [Wis. Stats. §§ 5.90\(1\) & 9.01\(1\)\(b\)6](#).

❑ *Test the optical scan tabulator*

The board of canvassers tests the automatic tabulating equipment to ensure it is programmed correctly for the recount using a pre-audited group of ballots marked to record a predetermined number of valid votes for each candidate or contest choice (test deck). The test deck should include at least one ballot with more selections than permitted (overvote) and for recounts in a partisan primary, at least one ballot with votes in more than one party primary (crossover) in order to test the ability of the tabulator to reject such ballots. The results of the test deck tabulation should be compared to the pre-audited results to ensure accuracy and a record of the test results should be noted in the minutes. [Wis. Stats. §§ 5.84\(1\) & 5.90\(1\)](#). The board of canvassers may choose to test the tabulator for all reporting units at once and skip this step in subsequent reporting units if using the same memory device for all reporting units.

❑ *Compare Duplicate Ballots with Original Ballots*

On eElection dDay, some ballots cannot be processed by the optical scan tabulator due to overvotes or other defects. When this happens, election officials create a duplicate ballot to honor as much of the elector's intent as possible. The duplicate ballot is then tallied by the equipment and the original is set aside and not counted. Both the duplicate and original ballots should be marked as such and contain identical serial numbers so they can be matched up. [See Wis. Stat. § 5.85](#).

The board of canvassers compares any duplicate ballots with their respective originals to determine the correctness of the duplicates. If any duplicate ballots were remade incorrectly, the board of canvassers should set aside the incorrectly remade duplicate ballot, mark it with the reason for its removal, create a new duplicate ballot, and mark it as such. [Wis. Stat. § 5.90\(1\)](#).

❑ *Insert Ballots into the Optical Scan Tabulator*

Each ballot shall be reviewed by the board of canvassers and may be inspected by the candidates or their representatives before being inserted into the tabulator. If it appears the ballot may not be recorded correctly by the tabulator, or if the ballot is objected to, the ballot is set aside to be examined by the board of canvassers for voter intent and counted separately by hand.

❑ *Generate Results*

The board of canvassers places the optical scan tabulator into post-election mode and generates

a results tape for the reporting unit. The board of canvassers adds in any votes counted

separately by hand using new tally sheets and records the total results as part of the revised canvass statement. See Step #89.

If the equipment needs to be used for another reporting unit, the board of canvassers shall ensure that all ballots have been removed from the tabulator and re-secured in ballot bags or containers before proceeding to reset the equipment for use with the next reporting unit.

3) Direct Record Electronic (DRE)

In many polling places across the state direct record electronic (DRE) voting equipment is used in conjunction with paper ballots or optical scan ballots to enable individuals with disabilities to vote privately and independently. As a result, the paper ballots and optical scan ballots should be counted first by following the steps described above, if applicable.

Separate the Voter Verified Paper Audit Trail into Individual Ballots

DRE equipment records votes two separate ways: electronically and on a paper tape that the voter can view to verify the equipment is recording their votes correctly before casting their ballot. In a recount, the board of canvassers is required to use the paper record. [Wis. Stat. § 5.90\(1\)](#). The paper tape consists of a pre-election readiness report, a zero-report showing that no votes are currently in the memory of the machine, individual ballot records, and a closing results report.

To facilitate counting of the individual ballot records and to preserve the confidentiality of an individual's vote, the board of canvassers may cut the paper record to separate the individual voter records and then further cut the paper tape into the individual ballots, which would then be randomized. When cutting the paper tape be careful that only the section of the tape covering eElection dDay is used. When separating the tape into individual ballots, watch for "voided" ballots, which appear the same as other ballot entries except they will be followed by a "void" entry on the tape. The "void" entry may appear far below the record of votes cast on the tape. These "voided" ballots should not be counted as they were not cast.

As an alternative to cutting the paper tape, the boards of canvassers may retain the paper record in its original format and simply scroll through the tape to count each individual ballot. However, if the tape is not cut, the board of canvassers must take the appropriate precautions to ensure the confidentiality of votes, as the entries on the paper record will be in the order that the voters used the equipment.

If due to a paper jam or misprint some individual ballot records are not available, the board of canvassers may consult with the voting equipment vendor to determine if the missing records can be recreated. The board of canvassers may be able to obtain records from the vendor, such as cast ballot records, that will allow them to tally votes from the missing ballot records. Any such tallying should be documented in the recount minutes.

Tally Individual Ballots to Determine the Total Vote

The board of canvassers carefully counts each individual ballot record as recorded on the tape. The counts should be recorded by two individuals on clearly labeled tally sheets (EL-105). After all of the counts have been recorded, the two tally sheets should be compared against each other to ensure an accurate count is determined. The recount vote totals should be compared against the original results as generated by the DRE and any discrepancies shall be recorded in the

minutes.

7. Secure Original Materials

After concluding the recount for a particular reporting unit, the board of canvassers shall gather and account for all original election materials. All ballots shall be placed into a ballot bag or container and resealed. The board of canvassers shall document in the minutes the serial number of any new security seals or tags used.

All election materials should be accounted for before proceeding to the next reporting unit to prevent the accidental mixing of materials from different reporting units.

8. Prepare New Canvass Statement

If any corrections were made to the results, the board of canvassers shall prepare a statement of revised election results using the canvass reporting form (EL-106). [Wis. Stat. § 9.01\(1\)\(b\)9.](#)

After the Recount

What does the board of canvassers do after completing the recount?

- If the recount is for a municipal election, the board of canvassers promptly forwards the results and minutes to the municipal clerk.
- If the recount is for a school board election, the board of canvassers promptly forwards the results and minutes to the school board clerk.
- If the recount is for a county election, the county board of canvassers promptly forwards the results and minutes to the county clerk.
- If the recount is for a state or federal election, the results and minutes of the recount are to be forwarded immediately to the Wisconsin Elections Commission and should be received no later than 13 days after the recount is ordered. [Wis. Stat. § 9.01\(1\)\(ar\)3.](#)

A copy of the minutes of any recount should be sent to the Wisconsin Elections Commission. For federal, state, and county elections, the board of canvassers should also send copies of the minutes to the chief officers of the state or county committee for any registered political party who had candidates for that office. [Wis. Stat. § 9.01\(5\)\(bm\).](#)

No certificate of election may be issued by the filing officer until the deadline for filing all appeals has passed and the election results are final.

How Does a Candidate or Petitioner Challenge the Recount Results?

The candidate or petitioner has a right to appeal the recount determination in circuit court. The appeal must be filed with the circuit court within five (5) business days of the completion of the recount in all counties concerned. Notice must also be served in person or by certified mail on all other candidates and persons who filed a written notice of appearance before the board of canvassers. If the recount affects a state or federal office or referendum, notice of the appeal must be served on the Wisconsin Elections Commission. See Wis. Stats. §§ [9.01\(6\)](#), [\(7\)](#), [\(8\)](#), & [\(9\)](#).

The recount process and the subsequent judicial appeals is the exclusive remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect, or mistake committed

during the voting or canvassing process. [Wis. Stat. § 9.01\(11\)](#).

Conclusion

This information is prepared pursuant to [Wis. Stat. § 9.01\(10\)](#). Petitioners, candidates, and filing officers should seek legal counsel when they are involved in a recount. If you have any questions, concerns, suggestions or recommendations about the recount process, please contact the:

Wisconsin Elections Commission

P.O. Box 7984

Madison, WI 53707-7984

Phone: 608-261-2028 Fax: 608-267-0500

Email: elections@wi.gov

Website:

<https://elections.wi.gov/>

Appendix

Sample Forms	1-6
Recount Petition	1
Recount Petition for Referendum	2
Order for Recount	3
Public Notice of Recount	4
Acceptance of Service	5
Recount Minutes	6
Recount Fee Scenarios	7
Recount Checklists	8-11
Supplies and Materials	8
Paper Ballot	9
Optical Scan	10
Direct Recording Electronic (DRE)/Touch Screen Voting	11
Commission Staff Memorandum: Construction of Wisconsin Election Statutes	12-15
Directory vs. Mandatory Application of Statutes	12-13
Election Official Error vs. Voter Error	14
Board of Canvassers Discretion	14-15
Public Health Guidance	16

SAMPLE RECOUNT PETITION

In Re: The Election for (specify office)	Verified Petition for Recount
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Petitioner (name of petitioner) alleges and shows to (specify the clerk or body with whom nomination papers are filed for that office):

1. That Petitioner was a candidate for the office of (specify office) in an election held on (specify date of election);
2. The Petitioner is an ~~aggrieved~~ aggrieved party as defined in [Wis. Stat. § 9.01\(1\)\(a\)5.](#)
3. That Petitioner is informed and believes that a (mistake or fraud) has been committed in (specify each ward or municipality) in the counting and return of votes cast for the office of (specify office); and/or
4. That Petitioner (is informed and believes) or (knows of his/her own knowledge) that:

(Specify other defects, irregularities or illegalities in the conduct of the election).

Wherefore: Petitioner requests a recount of (specify each ward or municipality in which a recount is desired); each ward need not be specified if a recount is requested for all wards within a jurisdiction).

Dated this _____ day of _____, _____.

Petitioner

I, (name of petitioner), being first duly sworn, on oath, state that the matters contained in the above petition are known to me to be true except for those allegations stated on information and belief, which I believe to be true.

Petitioner

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public (or other person authorized to administer oaths)

My Commission Expires _____
(specify expiration date)

The information on this form is required by Wis. Stat. § 9.01. This form is prescribed by the Wisconsin Elections Commission, **212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, WI 53707-7984**, (608) 261-2028
EL-186 (Rev.4/18)

SAMPLE ORDER FOR RECOUNT

STATE OF WISCONSIN – (County)

In the matter of:)	
)	ORDER FOR RECOUNT
A Recount of the (Election))	
for (Title of Office))	
for the (District), held)	
on (Date))	

On (Date Recount Petition was filed), a recount petition was filed by (Petitioner’s Name), a candidate for the office of (Office Title) for the (District), at the (Election) held on (Date).

The petition requests a recount of (list specific wards or municipalities) for the office of (Office Title).

The filing officer has reviewed the petition. The petition is sufficient. Any applicable fee has been received and accepted.

Pursuant to Wis. Stat. § 9.01:

IT IS ORDERED THAT:

1. A recount be conducted of all the votes cast for the office of (Office Title) for the (District) at the (Election) held on (Election Date) in (list of specific wards or municipalities).
2. The boards of canvassers convene at (Time) on (Date) at (Location), to begin the recount.
3. The recount be completed by the board of canvassers immediately.
4. The clerk ~~transmits~~ transmits a certified canvass report of the result of the recount and a copy of the minutes of the recount proceedings to the Wisconsin Elections Commission immediately after the completion of the recount.

Dated: _____

(Clerk’s Name)
(Clerk’s Title)

SAMPLE PUBLIC NOTICE

Notice of Recount for the Office of (Office Title) for the (District) in the (Election)

TO: All Candidates On The Ballot For The Office of (Office Title) for the (District) and
Other Interested Persons

FROM: (Clerk)

SUBJECT: Recount of the Votes Cast for the Office of (Office Title) for the (District) in the
(Election)

DATE: (Date)

A recount of the votes cast at the (Election Date) (Election) for the office of (Office Title) for the
(District) will begin at the time and location set forth below:

(Municipality) – 9:00 a.m. on (Date), at (Location).

A copy of the recount petition is attached. This notice is given pursuant to Wis. Stat. § 9.01(2).

You have the right to be present and to be represented by counsel to observe and challenge the votes
cast and the board of canvassers' decisions at the election.

Attachment

Sample Acceptance of Service

MEMORANDUM

DATE: (Date)
TO: (Clerk)
FROM: Candidate for (Office)
SUBJECT: Service of Recount Petition

Pursuant to Wis. Stat. § 9.01(2) on this day, I have personally received delivery of copies of the notice of recount, recount petition, and order for recount for the office of (office) at the (election date) (election name). I agree to waive service and accept delivery.

(Signature of Candidate)

(Print Name)

Sample Recount Minutes

Date of Recount:

County:

Office to be Recounted: *(Include District Number)*

Original Result: *(Candidates' Names and Votes for Each Candidate. If there was a tie, explain how it was broken.)*

Canvass Board Members: *(If substitute, give reason for substitution.)*

Other Personnel: *(Tabulators, Corporation Counsel, Clerical Support)*

Others Present:

Notification: *(Were candidates notified and was public notice given?)*

Electronic Voting Equipment Test Results:

For Each Reporting Unit:

Name of Municipality:
Reporting Unit:
Original Vote Totals for Reporting Unit:
Number of Voters from Registration List:
Number of Absentee Ballot Applications <u>(If Applicable)</u> :
Number of Absentee Ballots:
Notes: (Include a description of any discrepancies, irregularities, errors, problems, objections raised by observers. Record any decision of the board of canvassers. Identify any exhibits by description and number.)
Recount Vote Totals for Reporting Unit:

Recount Results:

An electronic or hard copy of the minutes from any recount must be sent to:

Wisconsin Elections Commission
P.O. Box 7984
Madison, WI 53707-7984
elections@wi.gov

Recount Fee Scenarios

Scenario #1: Village President

Candidate	Votes
A	4,500
B	4,410

In this scenario, candidate A would currently be elected to office. If a recount was requested, the fee is determined by first calculating the total votes cast for the office ($4,500+4,410 = 8,910$). The difference between the leading candidate and the petitioner (90 votes) is divided by the total votes cast (8,910) and then multiplied by 100 to get the percentage difference (1.01%).

Candidate B would be required to pay a filing fee as the percentage difference is greater than .25%. However, the vote difference between the leading candidate and the petitioner is more than 1% so the contest is not eligible for a recount.

Scenario #2: School Board (vote for up to 3)

Candidates	Votes
A	3,500
B	3,000
C	2,920
D	2,910
E	2,900
F	2,800

In this scenario, candidates A-C would currently be elected to office. If a recount was requested, the fee is determined by adding up all the votes cast for the office (18,030 total) and dividing it by the number of offices to be filled (3 in this scenario) to get a total of 6,010. The difference between the leading candidate (C, as he or she is the candidate with the lowest number of votes still being elected to office) and the petitioner is divided by 6,010 and multiplied by 100 to get the percentage difference.

So in this case:

- If Candidate D requested a recount, there would be no fee required as the difference is .17%, which is not greater than .25%
- If Candidate E requested a recount, a filing fee would be required as the difference is .33%, which is greater than .25%
- If Candidate F requested a recount, the difference would be 2% so the contest is not eligible for recount.

General Checklist of Supplies and Materials Needed for the Recount:

- Paper and Pens (To record the minutes of the recount!)
- Tape Recorder (Optional)
- Speaker Phone (for consultation with WEC staff or counsel)
- Test Deck for Electronic Voting Equipment Test
- New *Tally Sheets* (EL-105)
- New *Canvass Reports* (EL-106)
- Copies of any informational memoranda relating to the election and the recount prepared by the Wisconsin Elections Commission staff and sent to county and municipal clerks.
- Recount checklists and the *Elections Recount Procedures Manual* available from the Wisconsin Elections Commission

Election Materials from Each Reporting Unit:

- All ballots to be recounted, contained in the original ballot bag or ballot container (EL-101), including any provisional ballots processed after Election Day;
- All paper audit trails from direct record electronic (DRE) voting devices;
- All logs of security seals for ballot boxes or electronic voting equipment;
- Both copies of the original poll lists, including any supplemental voter lists;
- ~~All absentee ballot applications (See page 7);~~
- Any rejected absentee ballots, contained in the original brown carrier envelope (EL-102);
- Any used absentee ballot certificate envelopes, contained in the white carrier envelope (EL-103);
- The original Inspectors' Statement (EL-104);
- The MBOC Record of Activity (EL-104P) created during the processing of provisional ballots, if any;
- The original tally sheets (EL-105) and any results tapes generated by electronic voting and tabulating devices;
- The original canvass report of the election results (EL-106);
- The amended canvass report of the election results created after any provisional ballots were tabulated (EL-106P);
- Any provisional ballot documentation (EL-108 & EL-123);
- The absentee ballot log (EL-124); and
- The test deck for any electronic voting equipment.

Recount Checklist

Hand Counted Paper Ballots

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, ~~applications~~, rejected, defective envelopes, all certificates.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots*.)
- Review provisional ballots.
- Hand count paper ballots.
 - Sort ballots by candidate.
 - Create stacks of a fixed number.
 - Tally the stacks using duplicate original tally sheets (EL-105).
- Add in any votes counted separately by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach completed checklist to minutes.

Recount Checklist

Optical Scan Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, ~~applications~~, rejected, defective envelopes, all certificates.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots*.)
- Review provisional ballots.
- Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EL-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Test the automatic tabulator (*The Board of Canvassers may choose to test the tabulator for all reporting units at once and skip this step in subsequent reporting units if using the same memory device for all reporting units.*)
- ~~Compare duplicate ballots with original ballots.~~
- Feed ballots into the optical scan tabulator.
- Generate results.
- Add in any votes counted separately by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.

Recount Checklist

Direct Recording Electronic (DRE)/Touch Screen Voting Equipment

Municipality _____ Date _____
Reporting unit _____ Contest _____

This checklist is designed to facilitate uniform practices and is to be completed simultaneously with the recount process for each reporting unit in the recount.

- Compare and reconcile poll lists.
- Absentee ballot review: number, ~~applications~~, rejected, defective envelopes, all certificates.
- Verify tamper evident serial number on ballot container matches seal number written on Inspectors' Statement (EL-104) and Ballot Container Certification (EL-101).
- Ballot count.
 - Review ballots marked "rejected," "defective," or "objected to."
 - Separate absentee ballots and drawdown (*May be skipped if the number of absentee ballots equals the number of proper envelopes*).
 - Reconcile the number of ballots with the number of voters.
 - Treatment of excess ballots (*May be skipped if the number of voters equals or exceeds the number of ballots.*)
- Review provisional ballots.
- Verify voting equipment tamper evident serial number seal number written on Inspectors' Statement (EL-104) contains Chief Inspector's initials for pre-election and post-election verification.
- Separate voter-verified paper audit trail into individual ballots (may be skipped if canvass board members take appropriate precautions to ensure the confidentiality of individual electors' votes)
- Hand count permanent paper record of votes generated by DRE and record on duplicate tally sheets (EL-105).
- Add in any votes counted by other methods.
- Secure the original election materials.
- Prepare canvass statement.
- Prepare minutes for each reporting unit and attach checklist to minutes.

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
POST OFFICE BOX 7984
MADISON, WI 53707-7984
(608) 261-2028
ELECTIONS@WL.GOV
ELECTIONS.WI.GOV



COMMISSIONERS

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INTERIM ADMINISTRATOR MEAGAN WOLFE

MEMORANDUM

DATE: _____ For the May 24, 2018 Commission Meeting

TO: _____ Members, Wisconsin Elections Commission

FROM: _____ Meagan Wolfe
Interim Administrator

Prepared and Presented by:
Michael Haas, Staff Counsel
Nathan Judnie, Senior Elections Specialist

SUBJECT: _____ Commission Recount Manual

The information contained in the Commission's Recount Manual is prepared pursuant to Wis. Stat. § 9.10(10) to ensure that uniform procedures for boards of canvassers conducting recounts are followed when possible. The purpose of the Recount Manual, and other manuals and guidance documents prepared by the Commission staff, is to help explain statutory requirements, offer guidance on ambiguous provisions of the statutes, if necessary, and when needed, expand upon statutory requirements with recommended best practices and procedures.

Unlike laws governing other topic areas, the construction and application of election laws is somewhat unique.

5.01 Scope. (1) CONSTRUCTION OF CHS. 5 TO 12. Except as otherwise provided, chs. 5 to 12 shall be construed to give effect to the will of the electors, if that can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.

Wis. Stat. § 5.01(1). The Legislature's decision to construe Wisconsin's election statutes in this manner affects how the courts have interpreted these statutes which in turn influences advice provided by Commission staff when fact specific scenarios are presented, usually on a case-by-case basis. The construction of statutes to "give effect to the will of the electors" has resulted in three general concepts which provide the framework for advice rendered by Commission staff: 1) directory vs. mandatory application of election statutes, 2) election official error vs. voter error, and 3) board of canvassers decision-making discretion.

Directory vs. Mandatory Application of Statutes to "give effect to the will of the electors"

Based on Wis. Stat. § 5.01(1) (and its identical predecessor statute), Wisconsin courts view the election statutes with an eye towards a voter's ballot being counted as cast when possible, versus a ballot being set aside and not counted if the will of the elector can be determined, even if a statute directs—but does not mandate—a ballot to be set aside in certain circumstances. Especially during a recount, this construct can be important in reviewing ballots that may or may not have been issued, cast or counted in compliance with every specific step of the election statutes. The consistent application of this concept is illustrated by the following statements of the Wisconsin Supreme Court:

The difference between mandatory and directory provisions of election statutes lies in the consequences of nonobservance: An act done in violation of a mandatory provision is void, whereas

an act done in violation of a directory provision, while improper, may nevertheless be valid. Deviations from directory provisions of election statutes are usually termed ‘irregularities,’ and, as has been showing in the preceding subdivision, such irregularities do not vitiate an election. Statutes giving directions as to the mode and manner of conducting elections will be construed by the courts as directory, unless a noncompliance with their terms is expressly declared to be fatal, or will change or render doubtful the result, as where the statute merely provides that certain things shall be done in a given manner and time without declaring that conformity to such provisions is essential to the validity of the election. *Sommerfeld v. Board of Canvassers*, 269 Wis. 299, 69 N.W.2d 235 (1955), *Olson v. Lindberg*, 2 Wis.2d 229, 85 N.W.2d 775 (1957).

In keeping with sec. 5.011, Stats. (which is now sec. 5.01(1)), this court has quite consistently construed the provisions of election statutes as directory rather than mandatory so as to preserve the will of the elector. *Grandinjan v. Boho*, 29 Wis.2d 674, 139 N.W.2d 557 (1966).

...We have held that the word ‘shall’ can be construed to mean ‘may.’ *George Williams College v. Williams Bay*, 242 Wis. 311, 7 N.W.2d 891 (1943).

In passing upon statutes regulating absentee voting, the court should look to the whole and every part of the election laws, the intent of the entire plan, the reasons and spirit for their adoption, and try and give effect to every portion thereof. *Sommerfeld*, 269 Wis.2d at 238.

The Court has consistently sought to preserve the will of the electors by construing election provisions as directory if there has been substantial compliance with their terms. *Grandinjan*, 29 Wis.2d at 682.

Throughout the statutes with reference to elections the intent of the legislature is apparent. It is to encourage and assist qualified electors to cast their ballots for candidates of their choice. To prevent fraud the legislature in some instance has specifically stated that there must be strict compliance with a statute or a ballot cannot be counted. In so far as we have been called upon to construe that statutes we have held that where the legislature has provided in explicit language that absentee ballots shall not be counted unless certain provisions of the statute are complied with, compliance with those provisions is mandatory. Where it has not done so expressly and in clear language we have held that provisions regulating absentee voting are directory, and that strict compliance therewith is not required. *Petition of Anderson*, 12 Wis.2d 530, 533 (1961).

See also additional cases in which the Court has determined that election statutes shall be interpreted as directory and not mandatory as to give effect to the will of the electors: *State ex rel. Tank v. Anderson*, 191 Wis. 538, 211 N.W. 938 (1927), *State ex rel. Baneroft v. Stumpf*, 21 Wis. 586 (1867), *Ollman v. Kowalewski*, 238 Wis. 574, 300 N.W. 183 (1941), *State ex rel. Graves v. Wiegand*, 212 Wis. 286, 249 N.W. 537 (1933), *State ex rel. Oaks v. Brown*, 211 Wis. 571, 249 N.W. 50 (1933), *Lanser v. Koeonis*, 62 Wis.2d 86, 214 N.W.2d 425 (1974), *McNally v. Tollander*, 302 N.W.2d 440, 100 Wis.2d 490 (1981).

One area of the election statutes that the Legislature has determined should be read as mandatory, are some provisions related to the absentee voting process—Wis. Stat. §§ 6.86, 6.87(3) to (7)—and how absentee ballots should be treated at a recount—Wis. Stat. § 9.01 (1)(b)2. and 4. See Wis. Stat. § 6.84(1) and (2). In those instances, for example, when an absentee ballot certificate envelope is unsigned by the voter or the witness, those ballots cannot be counted. If absentee ballots were originally counted by the local board of canvassers in contravention of the absentee ballot procedures, those ballots during a recount “may not be included in the certified result of any election.” This is the basis for separating probable absentee ballots from regularly cast ballots during a recount—the mandatory versus directory treatment of ballots cast in contravention of an absentee procedure contained in §§ 6.86 or 6.87(3) to (7).

With the noted exception above for certain absentee ballot procedures, the Commission staff (as well as the former State Elections Board staff and the former Government Accountability Board staff) provides guidance that is intended to give effect to the will of the electors which may apply a directory reading of the statutes, given a specific fact scenario. This may happen when, for example, a question is received as to whether a drawdown should occur when the election officials can identify the issue, it was no fault of the voter that more ballots exist than voters, the total number of ballots issued at a polling place reconciles with the total number of voters (but not within the reporting unit, meaning incorrect ballots were likely issued), and there is no evidence of any fraud or malfeasance. In such cases Commission staff often advise that a draw down is not the best practice, although the final decision is

up to the board of canvassers. Drawing down requires the removal of a ballot, or ballots, at random and is generally viewed as a last resort option because the result will likely disenfranchise a random voter—something that the Legislature was arguably trying to avoid by inserting the language contained in Wis. Stat. § 5.01(1).

Election Official Error vs. Voter Error

Another line of cases which factors into advice provided by Commission staff, especially during a recount, concerns the identity of the individual that committed an error. The error is magnified when it results in the number of voters and ballots failing to reconcile which could trigger a random draw down of ballots prior to the counting of ballots at the recount. The question becomes whether a voter and their properly cast ballot should be subject to random removal and potential disenfranchisement if an error was committed by an election official and not the voter. Removing ballots through the draw down procedure when an election official issued a voter the wrong ballot or failed to initial a ballot does not seem to agree with the Legislature's construction of election statutes set forth in Wis. Stat. § 5.01(1) and caselaw below.

The Wisconsin Supreme Court has stated:

...The voter's constitutional right to vote cannot be baffled by latent official failure or defect.
Ollmann, 238 Wis. at 579.

In *State ex rel. Symmonds v. Barnett*, 182 Wis. 114, 195 N.W. 707 (1923), the ballot of certain voters were not counted, because the voter's names did not appear on the voter registration list. These voters were, however, duly registered voters who had voted in the preceding primary election. Only the failure of the registration board to update the registration list explained the omission of their names. This Court ordered that votes of these voters must be counted, stating: As a general rule a voter is not to be deprived of his constitutional right of suffrage through the failure of election officers to perform their duty, where the elector himself is not delinquent in the duty which the law imposes on him. *State ex rel. Wood v. Baker*, 38 Wis. 171 (1875); *Barnett*, 182 Wis. at 127.

Because the right to vote is so central to our system of government, this Court has consistently sought to protect its free exercise. *McNally v. Tollander*, 302 N.W.2d 440, 100 Wis.2d 490 (1981). In the *Ollmann* case, ballots were initialed by only one election official, rather than being initialed by two election officials per the statutory requirement. The Wisconsin Supreme Court held that the ballots with only one set of initials were properly counted, stating that: "The voter would not knowingly be doing wrong. And not to count his vote for no fault of his own would deprive him of his constitutional right to vote...A statute purporting so to operate would be void, rather than the ballots." *McNally*, 100 Wis.2d at 502 citing *Ollmann*.

When questions are asked by local officials regarding how to treat a ballot, especially in recount situations, who made the error is a factor that is considered when rendering advice based on the decisions issued in these cases. Without considering this factor, election officials with ill intentions could potentially manipulate election results by purposefully committing errors (issue wrong ballots, fail to apply required election official notations to the ballot), knowing that ballots will automatically be drawn down or a new election potentially ordered if errors are discovered and the statute requiring a draw down is applied in a mandatory fashion without considering the source of error.

In such cases, where it is clear that an error has been committed by an election official, the voter is not at fault and there is no evidence of fraud or malfeasance, Commission staff often advise that a draw down is not the best practice, although the final decision is up to the board of canvassers. Drawing down requires the removal of a ballot, or ballots, at random and is generally viewed as a last resort option because the result will likely disenfranchise a random voter—something that the Legislature was arguably trying to avoid by inserting the language contained in Wis. Stat. § 5.01(1).

Board of Canvassers Discretion

Despite advice provided by Commission staff when asked by a board of canvassers, ultimately that statutory body retains the authority and discretion to make decisions it deems appropriate. Statutes specifically provide the board of canvassers the authority to count and recount ballots and correct errors that may have occurred during the initial canvassing of ballots and certification of results. See Wis. Stat. §§ 7.51, 7.52, 7.53, 7.60 and 9.01(1) and (5). The board of canvassers is comprised of an odd number of individuals and takes into account party balance when

possible in its composition. Courts rely on the determination and reasoning of the board of canvassers when determining if a decision on appeal was properly decided and gave effect to the will of the electorate. See *DeBroux v. Board of Canvassers for the City of Appleton (Three Cases)*, 557 N.W.2d 423, 206 Wis.2d 321 (Wis. App., 1996) (“As the SEB notes in its brief, the statutory scheme for a recount ‘places a premium’ on the Board’s judgment to give effect to the will of the electorate.”)

The Commission’s procedures set forth in the Recount Manual, as well as the advice provided when a local election official or member of the board of canvassers asks a specific question on the treatment of a ballot, many times in the context of a recount, strives to be consistent with the intent of the election statutes and the supporting caselaw.

While the draw-down procedure for example, is effective at creating ballot and voter totals that reconcile, it is not an effective tool for determining and removing the exact offending ballot or ballots, which caused the number of ballots to not match the number of voters. Rather than recommend a procedure that will likely disenfranchise a random voter due to an error made by an election official, the Commission staff’s approach has been to advise a board of canvassers that they have some discretion to avoid a draw-down if they can identify an explanation as to why the discrepancy occurred, considering the factors discussed above.

Ultimately, the decision of the board of canvassers is what is challenged in court, not the advice rendered by the Commission staff. The Commission staff, however, believes the board of canvassers should be provided with advice that considers the cases discussing the “directory vs. mandatory” application of election statutes as well as considering who made the error that has generated the question in the first place. Any decisions made should consider “the will of the electors, if that will can be ascertained from the proceedings, notwithstanding informality or failure to fully comply with some of their provisions.”



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: For the November 18, 2020 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Meagan Wolfe, Administrator
Richard Rydecki, Deputy Administrator

SUBJECT: Public Health Guidance for Recount Proceedings

In preparation for a statewide recount Wisconsin Elections Commission (WEC) staff has worked with a public health professional from the Wisconsin Department of Health Services to develop suggested procedures for counties to apply to recount planning and setup efforts. These procedures follow the same concepts we have stressed throughout the 2020 elections that have been conducted during the COVID-19 pandemic. Public health considerations such as hand hygiene, face coverings, social distancing and COVID-19 symptom screenings should be incorporated into any recount setup. New considerations must be made to account for how recounts differ from administering voting at polling places or during the in-person absentee period.

Conducting a recount requires a significant number of people to be present in the same room or facility, including Board of Canvass members, tabulators, candidate representatives, public observers and other staff to assist with administrative and security-related tasks. The recount timeline also requires participants to be present in enclosed areas for long periods of time until the recount is complete. State law requires any recount to be completed within 13 days of the issuance of the recount order and several counties have expressed they will need the majority of that time to complete all required procedures before the deadline. In addition, a recount requires tabulators and Board of Canvass members to work within close proximity of one another and allows candidate representatives to be close enough to review each ballot before it is tabulated. All of these factors were presented to the public health official who assisted with the development of this guidance and have been considered in the procedures outlined below.

Space Considerations

In order to keep all participants and observers spaced out appropriately during the recount, counties have had to consider securing a larger space during their planning process. Additional space provides the ability to space out tables where tabulators are working while still allowing for multiple reporting units or municipalities to be recounted at the same time. WEC staff has discussed this option on several calls with county clerks in preparation for the recount and many indicated they identified and reserved larger spaces to conduct the recount.

The use of a larger space was confirmed as a recommended option by DHS as the larger space will allow for increased airflow that prevent aerosols from building up throughout the day. Any practices that increase the percentage of outdoor air in the recount space are recommended, such as opening windows and propping open doors, if possible. You may be able to work with the vendor or owner of the recount space to increase total airflow supply to occupied spaces, if possible. This can be done by disabling or changing the settings of demand control ventilation (DCV) controls that reduce air supply based on temperature or occupancy.

Because of the prolonged nature of the recount, county officials may also consider the use of UV sanitation lights and additional ventilation, such as fans, where practicable. Some of these additional efforts may help to combat accumulation of aerosol particles. However, care should be taken in regard to where these items are utilized. For example, additional fans would not be appropriate directed at a table of paper, election materials, but a portable UV

Wisconsin Elections Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Julie M. Glancey | Dean Knudson | Robert Spindell | Mark L. Thomson

Administrator
Meagan Wolfe

light may be.

Setup Considerations

The recount space should be set up so that there is adequate space between all participants and observers but allows for transparency and efficiency throughout the process. Signs, tape marks, or other visual cues such as decals or colored tape should be used on the floor, placed six feet apart, to keep the recount area organized and to ensure space between all parties when physical barriers are not possible.

Tabulators are required to work in pairs when hand counting ballots and candidate representatives have the ability to review (but not touch) ballots before they are tabulated. For those that must work closely together, it is recommended some physical barriers (e.g., plexiglass shields) are used to provide protection between participants. These barriers can be the tabletop shields that many municipal clerks used on election day at polling places or in their offices during in-person absentee voting. Counties can coordinate with their municipal clerks to borrow excess shields that can be used during the recount.

Tables used for the recount should be arranged in a way that ensures adequate distance between participants and observers. The number of people assigned to each table should also be limited. Arrange chairs in seating areas by turning, draping (covering chair with tape or fabric so seats cannot be used), spacing, or removing chairs to maintain social distancing. Identifying chairs that should not be used will be essential if rooms are used during the recount that have permanent seating, such as county board meeting rooms.

Designated candidate representatives should be able to review a ballot during the recount proceedings. This will require the implementation of a system for the representative to safely examine the ballot without violating social distancing standards. Clear tabletop barriers can be used for this purpose, but other methods may be used depending on the set up and needs of each recount site.

Additional observers, beyond the party representatives who need to be allowed access to see voting materials, may be asked to remain in an area designated by the county officials that accounts for social distancing. Current public health guidance is that a six-foot distance should be maintained meaning that non-party representative observers should expect that they will be asked to stay at least six feet from recount workers and other observers.

Screening Questions

All individuals entering the recount facility or room should be screened to determine if they are exhibiting symptoms of COVID-19. Symptomatic individuals should not be allowed to participate in or observe the recount proceedings until they are free from symptoms. These questions were developed with the assistance of public health officials from the Wisconsin Department of Health Services.

1. Have you come in contact with a person known or suspected to have COVID-19?
2. Have you had a fever or chills in the last 24 hours?
3. Have you had a cough in the last 24 hours?
4. Have you had any shortness of breath or difficulty breathing in the last 24 hours?
5. Have you had any unexplained muscle or body aches in the last 24 hours?
6. Have you experienced a loss of taste or smell within the last 24 hours?
7. Have you had a sore throat within the last 24 hours?

If you answered "yes" to any of the seven questions, you should not participate in or observe at the recount today.

Face Coverings

Face coverings should be required of all people inside the recount space to help prevent the spread of COVID-19 among participants. Larger spaces and workstations that are spread out to account for social distancing will help minimize potential transmission of the virus but recount procedures still require tabulators and observers to be in close

proximity to one another and face coverings should be required to increase the safety of all involved in the recount. The Executive Order requiring face coverings is still in effect while legal challenges to that order are settled by the courts and other counties may have local public health orders that also require face coverings. The Board of Canvassers conducting the recount should clearly communicate with those attending the recount about social distancing, face coverings and hand hygiene health guidance prior to the start of the recount to ensure all individuals participating are aware of the role they play in keeping the location safe. It is recommended that County Clerks have additional disposable face coverings available for tabulators and observers who do not have their own upon arrival at the recount facility.

Hand Hygiene and Surface Cleaning

Strict hand hygiene and surface cleaning procedures should also be incorporated into the protocols at recount sites to minimize potential surface transmission of the virus. These procedures are familiar to election officials and have been recommended since the onset of the pandemic earlier this year. Participants and observers should be required to wash or sanitize their hands upon entry to the recount facility. In addition, tabulators should wash or sanitize their hands regularly throughout the day. If gloves are used, recount participants should take care when removing those gloves so as to not contaminate their bare hands in the process. After gloves have been removed, hands should be washed or sanitized to minimize the chance for COVID-19 transmission.

Surfaces such as tables and voting equipment should also be disinfected regularly throughout the day. Information on recommendations for election specific cleaning and disinfection are available on the Centers for Disease Control and Prevention webpage. In addition, approved cleaning procedures provided by your voting equipment vendor should be used to clean any voting equipment at regular intervals during the day. Best practices for cleaning different models of voting equipment can be found here: <https://elections.wi.gov/node/6723>.