

NOTICE OF OPEN AND CLOSED MEETING

Wisconsin Elections Commission

Special Meeting

Thursday, July 11, 2024

8:00 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-7112024>, 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:

When: Jul 11, 2024, 08:00 AM Central Time (US and Canada)

Topic: Meeting of the Wisconsin Elections Commission

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/87279285288?pwd=vqtctui7vz4LrjbkvpzSNoXdpXLL1fT.1>

Passcode: 115123

Or One tap mobile :

+13017158592,,87279285288#,,,,*115123# US (Washington DC)

+13052241968,,87279285288#,,,,*115123# US

Or Telephone:

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

+1 301 715 8592 US (Washington DC); +1 305 224 1968 US; +1 309 205 3325 US

+1 312 626 6799 US (Chicago); +1 646 558 8656 US (New York); +1 646 931 3860 US

+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; +1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

Webinar ID: 872 7928 5288

Passcode: 115123

International numbers available: <https://us06web.zoom.us/u/kdH3JgKBWs>

NOTICE OF OPEN AND CLOSED MEETING

OPEN AND CLOSED SESSION AGENDA

A. Call to Order

B. Administrator’s Report of Appropriate Meeting Notice

C. Closed Session**

1. Litigation Update and Consideration of Potential Litigation

§ 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.

D. Discussion and Possible Action Related to the Wisconsin Supreme Court Ruling in *Priorities USA v. Wisconsin Elections Commission*.

1

E. Discussion and Possible Approval of a Notice for a Preliminary Public Hearing and Comment Period for the Commission’s Emergency Scope Statement Concerning Election Observers, SS 074-24

24

F. Adjourn

***The Elections Commission will convene in open session but may move to closed session under Wis. Stat. § 19.85(1)(g) and then reconvene into open session prior to adjournment of this meeting. This notice is intended to inform the public that this meeting will convene in open session, may move to closed session, and then may reconvene in open session. Wis. Stat. § 19.85 (2).*



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: Prepared for the July 11, 2024, Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Prepared and Presented by:
Angela O'Brien Sharpe, Staff Attorney

SUBJECT: Commission Review and Issuance of Guidance following *Priorities USA v. WEC*

ATTACHMENTS: **Attachment A:** Draft Clerk Communication and FAQ

Introduction:

On July 5, 2024, the Wisconsin Supreme Court issued a decision in *Priorities USA v. WEC*¹, which overturned a previous decision and held that unstaffed secure drop boxes are a legal method of absentee ballot return under state law.

The Commission should review, consider, and issue guidance to clerks that answers common questions that have arisen since the publication of the decision. A draft guidance document is included in Attachment A. WEC staff will also use the Commission approved guidance to create training for local election officials.

The topic of absentee ballot drop boxes and absentee ballot return options in general are only discussed in the Election Administration manual. There are two brief mentions about the different ways a voter can return their ballot and the impacts of the *Teigen v. WEC* court decision on pages 76-77 and pages 86-88. The language on these specific pages can be found in Attachment B. This information is being provided so that the Commission can determine if any changes to the manuals are needed. If the Commission wishes to make changes to the manuals, then staff will bring back suggested changes for the Commission's consideration at a future meeting.

Recommended Motion: The Wisconsin Elections Commission approves and issues the Clerk Communication and FAQ in **Attachment A**, including questions 1 through 18 in the FAQ, subject to the following revisions: [itemize revisions or edits]. The Commission directs staff to make edits to the *Election Administration* and *Election Day* manuals consistent with its discussion, and to bring revised pages back for Commission approval at a future meeting.

¹ 2024 WI 32. Wisconsin Supreme Court Number: 2024AP000164; Dane County Circuit Court Number: 2023CV1900.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe



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

DRAFT PREPARED FOR COMMISSION'S CONSIDERATION **This Document does not Constitute Guidance**

DATE: July 11, 2024

TO: Wisconsin Municipal Clerks
Wisconsin County Clerks
City of Milwaukee Election Commission
Milwaukee County Election Commission

FROM: The Wisconsin Elections Commission

SUBJECT: **Litigation Update: *Priorities USA v. WEC*¹**
RE: Unstaffed drop boxes; municipal clerk discretion; *Teigen v. WEC*²

ATTACHMENTS: **Attachment A - Drop Box Resources from the United States Election Assistance Commission**

On July 11, 2024, the Wisconsin Elections Commission (“the Commission”) held a public meeting to review and issue guidance following the Wisconsin Supreme Court’s decision in *Priorities USA v. WEC*. The Commission passed the following motion **unanimously/by a X-X vote**:

[Insert Motion Language]

The Commission is issuing this guidance in the interest of answering common questions it has received from clerks, voters, and the media since the decision was published by the Wisconsin Supreme Court. The Commission may issue additional guidance in the future to address new questions or aspects of drop box administration and policy ahead of the November 2024 General Election.

Priorities USA v. WEC **Frequently Asked Questions** **July 11, 2024**

Decision Issued: On July 5, 2024, the Wisconsin Supreme Court overruled its prior decision, in part, in *Teigen v. WEC*, and held that secure drop boxes were permitted under state law as a valid method of absentee ballot return. The decision is binding on all lower Wisconsin courts. The use of drop boxes is not mandatory and is at the discretion of the municipal clerk.

¹ 2024 WI 32. Wisconsin Supreme Court Number: 2024AP000164; Dane County Circuit Court Number: 2023CV1900

² 2022 WI 64, 403 Wis. 2d 607; 976 N.W.2d 519.

DRAFT PREPARED FOR COMMISSION'S CONSIDERATION

This Document does not Constitute Guidance

1. Does the decision affect all municipal clerks?

Yes. The decision permits all municipal clerks to choose to use secure absentee ballot drop boxes in their jurisdiction if they wish, starting immediately.

2. What does the decision say?

The Wisconsin Supreme Court determined that the statute that permits voters to return their absentee ballots “to the municipal clerk issuing the ballot or ballots” refers to a person, not a location. The court asserted that this interpretation of state law is consistent with Wisconsin’s highly decentralized system whereby municipal clerks have broad statutory discretion to administer elections in their jurisdiction. Accordingly, since voters may return their absentee ballots to the municipal clerk, or his or her authorized representatives, they may do so via drop box, if that’s a method the municipal clerk chooses to utilize.

3. Does the decision change any established practice?

Yes. The decision reverses a prior Wisconsin Supreme Court decision, in part, and holds that secure drop boxes are a legal method of absentee ballot return under Wisconsin law.

4. Do clerks have to use drop boxes?

No. The decision explicitly states that it does not require clerks to use drop boxes, it just says that the law permits clerks to utilize them if they choose. So if a municipal clerk decides not to use drop boxes in an exercise of clerk election administration discretion, they will not be violating the *Priorities USA* decision. Clerks should note, however, that choosing not to use drop boxes because of a belief that they are not legal is likely inconsistent with the reasoning of the decision, and raises the risk of a legal challenge.

5. Can a clerk be sued if he or she chooses not to utilize drop boxes?

Likely not. If a clerk chooses not to use drop boxes in upcoming elections, it is very unlikely that a challenger would be successful in arguing that *Priorities USA* requires them to be used.

6. Are the Commission’s previous memos related to drop boxes prior to the *Teigen* decision back in effect?

No. The Commission withdrew memoranda dated March 31 and August 19, 2020 relating to drop boxes as part of the *Teigen* litigation on February 16, 2022. The *Priorities USA* decision does not mean either of those memoranda are back in effect.

This memorandum, dated July 11, 2024, is the Commission’s sole issued guidance document related to drop boxes as of this date.

7. Did the decision discuss where drop boxes may be located and who can set them up?

Yes. The decision stated that drop boxes are set up, maintained, secured, and emptied by the municipal clerk, which includes their authorized representatives. A single person need not set up, maintain, secure, and empty all drop boxes in a municipality. The drop boxes may be placed in a location other than the

DRAFT PREPARED FOR COMMISSION'S CONSIDERATION

This Document does not Constitute Guidance

municipal clerk's office, and may be placed in any location that the municipal clerk, within his or her statutory discretion, designates.

8. Do drop boxes need to be secure? What should clerks consider when examining drop box security?

Yes. The decision held that state law permits clerks to lawfully utilize secure drop boxes in an exercise of their statutorily conferred discretion. The decision did not provide guidance on what it means for a drop box to be "secure." The Commission recommends that clerks keep the following non-exhaustive security considerations in mind when planning to utilize drop boxes, which are consistent with guidance from the U.S. Election Assistance Commission (EAC) and the U.S. Cybersecurity and Infrastructure Security Agency (CISA). These considerations are merely a starting point—the Commission recommends that clerks thoroughly complete a security assessment for each intended drop box location prior to deployment.

- **Physical Security of the Drop Box Itself**
 - Is the drop box permanently affixed to the ground or the side of the building?
 - If located outside, is the drop box sturdy enough to withstand the elements so the ballots inside will remain unspoiled?
 - How has the drop box been secured against unlawful access or emptying?
 - Is the slot of the drop box appropriately sized so that only an absentee ballot can be deposited and not other objects?
- **Security of the Drop Box Surroundings**
 - Is the drop box located near a lot of traffic or busy intersection?
 - Is the area around the drop box well-lit?
 - Is the drop box clearly visible, and is the path to it accessible with clear and level ground space in front?
- **Security of Ballot Retrieval/Emptying**
 - How often should the drop box be emptied, depending on anticipated use and community size?
 - Is the drop box equipped with unique locks or seals to secure ballots?
 - Who will empty the drop box, and how will those procedures be documented?

The Commission recommends that clerks review the following resources from the EAC and CISA as a starting point for procedures on the secure administration of drop boxes:

- EAC Quick Start Guide on Drop Boxes (PDF)
 - https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot_Drop_Boxes_EAC_Quick_Start_Guide_508.pdf
- EAC Election Management Guidelines, Pages 53, 80, 100 (PDF)
 - https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC_Election_Management_Guidelines_508.pdf
- EAC Sample FAQ Language for How Drop Boxes Work that Can be Adapted for Wisconsin
 - <https://www.eac.gov/how-do-drop-boxes-work>
- CISA Drop Box Considerations
 - https://www.cisa.gov/sites/default/files/2023-07/Ballot_Drop_Box.pdf

9. Does the governing body of the municipality need to be the one to designate drop box locations?

No. The governing body of the municipality designates the location of alternate absentee voting sites under Wis. Stat. § 6.855, but need not also designate drop box locations. The *Priorities USA* decision clearly

DRAFT PREPARED FOR COMMISSION'S CONSIDERATION

This Document does not Constitute Guidance

states that state law "...requires only that the ballot be delivered to a location the municipal clerk, within his or her discretion, designates."³

10. Who can return a ballot to a drop box?

A voter may return his or her own ballot. An individual may also return the ballot of anyone he or she is lawfully assisting, such as a voter with a disability or a hospitalized voter. An individual is permitted to provide assistance to more than one disabled or hospitalized absentee voter. These principles were issued in Commission guidance following the litigation in *Carey v. WEC*, and are unchanged by the *Priorities USA* decision.⁴

The decision does not say that drop boxes need to be staffed, nor does the decision require a clerk to ask any questions of a voter who is attempting to return a ballot to a drop box.

11. What steps should clerks take if they want to display their drop box locations on MyVote ahead of the August 13, 2024 election?

Once implemented, clerks will be able to add drop box locations and information to WisVote under Election Specific Absentee Options, which will make the drop box locations viewable to voters in their municipality on MyVote. Registered voters in these municipalities will be able to see the information under "Find My Local Absentee Options" button from the Vote Absentee section (<https://myvote.wi.gov/en-us/VoteAbsentee>). Clerks will receive detailed instructions when this functionality becomes available again.

12. Does the decision require clerks to track which ballots are received by drop box?

No. Nothing in the decision requires clerks to track, mark, or otherwise separate or indicate which returned absentee ballots were received via secure drop box.

13. Why did the court overrule its previous decision from only two years ago?

In general, the legal principle of *stare decisis* prevents courts from overruling decisions they don't like or don't agree with—they usually have to show something more, usually that the decision was obviously wrong or misguided. Here, the *Priorities USA* majority argued that *Teigen* was unsound in principle because of how it interpreted the legislative policy absentee provision of § 6.84. The *Priorities USA* majority claimed that the *Teigen* court relied too heavily upon § 6.84, the end result of which was a "skeptical" view of and strict construction of absentee voting provisions. The majority here thought this was incorrect—that § 6.84 requires mandatory compliance not strict construction. Accordingly, the majority believed this was enough to justify overruling *Teigen*.

14. Will there be additional training on drop boxes?

Yes. Commission staff intend to provide training to clerks in ElectEd that will be consistent with the Commission's guidance.

15. Are private citizens permitted to watch drop boxes if they are located in public?

³ *Priorities USA v. WEC*, 2024 WI 32, P26. The *Priorities USA* decision also states that Wis. Stat. § 6.855 "...simply does not apply to drop boxes." *Id.* at P29.

⁴ Available at: <https://elections.wi.gov/memo/guidance-absentee-ballot-return-options-under-federal-voting-rights-act>.

DRAFT PREPARED FOR COMMISSION'S CONSIDERATION
This Document does not Constitute Guidance

Yes, but not if the watching interferes with voting. Whoever “interrupt[s] or disturb[s] the voting...proceedings” may be fined not more than \$1,000, or imprisoned not more than 6 months or both.⁵ Additionally, anyone who “by abduction, duress, or any fraudulent device or contrivance, impede[s] or prevent[s] the free exercise of the franchise at an election” is guilty of a Class I felony.⁶

Clerks should immediately contact law enforcement if anyone tampers with, defaces, destroys, unlawfully empties, or impedes the use of a drop box.

16. What should I do if I still have questions?

If you have additional questions, please email elections@wi.gov.

⁵ See Wis. Stat. §§ 12.13(3)(x), 12.60(1)(b).

⁶ See Wis. Stat. §§ 12.09(2), 12.60(1)(a).



ELECTION MANAGEMENT GUIDELINES

WWW.EAC.GOV

Below are a few general guidelines for securing voting equipment during voting periods:

- During early voting:
 - The electronic storage media and paper ballots should be secured each night in a tamper-proof location, preferably within the elections office.
 - Voting equipment should be closed, sealed, and secured at the end of each day. Record the number on all protective seals and public counters. In addition, verify seals and counters before the voting equipment is used the following day.
 - Every evening, any mobile unit containing voting equipment should be returned to the elections office and stored within a secure facility.
- If voting equipment and election supplies are delivered to the polling place by anyone other than poll managers, the poll manager(s) should verify the serial numbers of all voting equipment and necessary election supplies (ballot activation devices, administrator devices, communication equipment, closing seals, etc.).
- Voting equipment setup should be as follows:
 - Access to the voting equipment's power control, counter controls, and electronic storage media must be controlled within the voting machine and inaccessible to the voter.
 - Voting equipment should be in plain view of the poll managers at all times.
- On Election Day, a team of two poll workers (preferably bipartisan) should:
 - Verify the serial number and seal number on each voting machine and look for signs of tampering.
 - Activate the machine and verify the date, time, and public count.
 - On machines with a voter-verified paper audit trail, verify that it functions.
 - Sign-off on paperwork indicating all procedures were followed.

DROP BOX SECURITY

Election officials must include ballot drop boxes in their security plans. The Quick Start Guide: Ballot Drop Boxes highlights several tips for ensuring the security of the drop box and collection procedures.

https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot_Drop_Boxes_EAC_Quick_Start_Guide_508.pdf

Additionally, the EAC chaired the Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Join COVID Working Group and developed guidance on drop box security that addresses placement, security, and collection practices.

https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf

Throughout the voting day, train workers to implement the following procedures to promote the security of the voting process:

- The area around the voting equipment must be secure at all times. Only poll workers, legally authorized personnel, and registered voters should be allowed in the voting machine or voting booth area. A voter should not be allowed to enter this area until a voting machine or booth is available for their use.
- Each poll worker should have a clearly defined role, so voters can identify them and their particular responsibilities as they move through the polling place.
- Poll workers should direct provisional voters to a separate check-in table or area to ensure provisional ballots are handled uniformly and establish ballot accountability for auditing purposes.

ELECTION MANAGEMENT GUIDELINES

There are a significant number of states that authorize the return of mail or electronically transmitted ballots by email, fax, or other electronic means such as an upload to a portal. Security procedures, chain of custody, and ballot duplication procedures in offices are determined by state law and guidance.

Drop Boxes

Election officials should review state law and regulations before using ballot drop boxes. When locating drop boxes, election officials consider population, geographic areas, security, and available funding. Election officials should consider using city and county facilities, public assistance offices, senior and community centers, locations in areas with significant minority or traditionally disenfranchised communities as drop box locations when applicable.

When determining locations and drop box placement, consider the following factors:

- Access for voters with disabilities
- Security
- Voter convenience
- Parking

Election officials should be sure to inform voters of the location and hours of operation for all drop boxes in their jurisdiction. The EAC's **Ballot Drop Boxes Quick Start Guide** provides additional information on locating and securing drop boxes.² The Quick Start Guide and the EAC's **Best Practices: Chain of Custody** include guidelines for developing robust chain of custody procedures applicable to emptying drop boxes.³ Additionally, the **Making Voting Accessible** Quick Start Guide outlines general accessibility considerations for ballot drop boxes.⁴

Ballot drop boxes must be locked and secure at all times. They should be placed in monitored areas or under video surveillance, whether indoor or outdoor. The drop boxes should be accessible only by a unique key, and two staff members (preferably bipartisan) should access the box to collect ballots.

Election officials should establish a predetermined collection schedule. A team of two election workers (preferably bipartisan) should transfer the voted ballots to a locked or sealed ballot box, bag, or pouch and deliver it to the elections office. On Election Day, election workers should monitor the drop box locations until the close of the polls or the deadline for ballot receipt. Two election workers (preferably bipartisan) should be assigned to lock each drop box location, collect all remaining ballots, and ensure the drop box is removed or cannot accept any additional ballots after the deadline.

In-Person Voting Locations

If state law allows the voter to drop off voted absentee ballots at in-person voting locations, election officials must include instructions and procedures for poll workers to use in returning these voted ballots to the central elections office. Depending on the jurisdiction, mail ballots returned to a voting location may either be scanned at the location or centrally scanned at the elections office. Poll workers must understand how to document receipt of mail ballots and track tabulation, if applicable, and return to the elections office.

Returned Ballot Audit Trail

Elections office staff must create an audit trail throughout the ballot reception process. Election officials should maintain logs for processing the ballots through each step. All statistical information must be maintained for each batch of ballots processed, including:

- Number of ballots received
- Number of ballots counted
- Name, team number, or persons involved
- Date and time processed
- Number of challenged ballots
- Number of write-ins and duplicated ballots
- Number of envelopes that do not contain a ballot
- Number of envelopes containing more than one ballot

² https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Ballot_Drop_Boxes_EAC_Quick_Start_Guide_508.pdf

³ https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.pdf

⁴ https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Making_Voting_Accessible_EAC_Quick_Start_Guide_508.pdf

Voting Area

The accessible voting area must be on an accessible route, have an accessible entrance, and have adequate circulation and maneuvering space for voters who use wheelchairs or scooters or walk with mobility aids.



Image 19: Example of the accessible interior voting area.

An accessible route must connect the accessible building entrance to the accessible voting area, including voter check-in, the location of the accessible voting machines, and an accessible exit. The survey should also identify any protruding objects (wall-mounted or overhead) along the circulation route to voter check-in and the voting area.

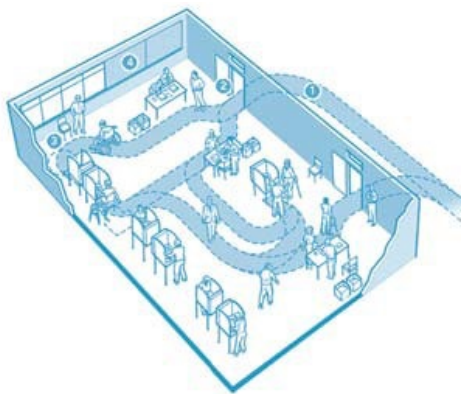


Image 20: Voting area accessibility. 1 – Accessible route connects the building entrance with the voting area, including voter check-in and accessible voting machines. 2 – Accessible door or doorway to the voting area. 3 – Turning space at the accessible voting machine. 4 – Blinds closed behind check-in so voters who read lips can communicate with the voting staff.

² https://www.eac.gov/sites/default/files/2021-08/LEO_Guide_to_Redistricting.pdf

GIS and Voting Locations

GIS is a software system for capturing, storing, and displaying data in interactive maps. In simple terms, GIS can combine different datasets such as addresses, streets, buildings, aerial photos, voting precincts, and district boundaries into a single digital map. GIS can yield great benefits by applying data visualization to assist with selecting voting and drop box locations, creating voter-specific look-up tools, displaying detailed election results and, more. GIS can also be used to increase the accuracy of voter registration systems.

Geocoding

For accuracy, election officials can overlay several GIS datasets to examine addresses, precincts, and districts boundaries. A process known as geocoding will assign a point on the map for every address in a street file. Election officials can compare the points to other information, including precinct and district boundaries, in the GIS workspace to identify discrepancies. The comparison can be a useful tool to validate changes made to precinct and district boundaries in election management systems. See the EAC's **Local Election Officials' Guide to Redistricting** for additional information.²

Selecting Polling and Drop Box Locations

GIS databases are a great tool to create efficiencies when managing voting locations. Election officials can use GIS data such as population demographics and public transportation routes to strategically locate voting locations and drop boxes in areas that are accessible to voters. Potential voting locations can also be pre-assessed by examining aerial photos of parking lots and accessible paths of travel before traveling to locations to confirm they meet accessibility requirements.

Voting Location Look-up Tools

Helping people find their voting location is an essential part of election administration. Election officials can use GIS to create address-specific look-up tools like other familiar map applications. The look-up tool's configuration can include

About the Quick Start Guides: The EAC's Quick Start Guides are intended to familiarize local election officials with various topics they will likely encounter in election administration. The guides are a starting point to identify areas of concern and give officials a broad idea of factors they should consider in approaching a given topic.

Utilizing Drop Boxes

In jurisdictions that permit ballot drop boxes, election officials must address several considerations before deploying drop boxes. First, they must familiarize themselves with state law and regulatory requirements. Some states only permit drop boxes in certain locations or with specific security measures. Drop boxes also come with additional costs, including staff to empty the boxes daily, hardware, security seals and locks, ballot containers, and other security equipment.



Locations



- Follow state statutes on required or permissible locations for the installation of drop boxes.
- Use demographic data to determine whether there should be a different formula for placing drop boxes in rural or urban locations (i.e., 1 for every 15,000 residents might be every mile in an urban area, but every 50 miles in a rural area).
- Choose a location that is accessible by public transportation (where available).
- Avoid locations that can be obstructed by high traffic events.
- Ensure the drop box is clearly visible and the path to it is accessible with a 30 inch by 48 inch minimum clear and level ground space in front.
- Publish Public Service Announcements on radio and in local newspapers, and share drop box locations on social media.
- Provide a list or map of drop box locations on your website and with mail ballot voting instructions.

Ballot Return Deadline
Election officials must ensure teams are present at each drop box as the ballot return deadline passes. Teams must allow any voters in line by the deadline to deposit their ballots, then collect all ballots, and lock the box so no additional ballots can be deposited.

Security



- Teams of two (preferably bipartisan) should empty each drop box at least once a day.
- Utilize unique locks and security seals to secure ballots within the drop box.
- Provide local law enforcement a map of drop box locations and request extra patrols.
- Ensure the area is well lit and any unsupervised drop boxes have video surveillance.
- Implement rigorous chain of custody procedures. For each drop box, teams should record the time and date emptied, verify the box's seal number, document the number of ballots retrieved, reseal the drop box, and seal the ballot container.
- Track the return of drop boxes after the ballot return deadline passes to ensure all drop boxes are emptied and ballots collected are included in election night unofficial results.

Sample Drop Box Chain of Custody Log				
Date & Time	Removed Seal #	# Ballots	New Seal #	Signatures
10/31/22 3:25pm	00987654	174	00123456	Team Member One Team Member Two
11/01/22 3:15pm	00123456	88	00456789	Team Member One Team Member Two

This document is one in a series created as part of the Cybersecurity and Infrastructure Security Agency (CISA) Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Joint COVID Working Group. These documents provide guidance for state, local, tribal, and territorial election officials on how to administer and secure election infrastructure in light of the COVID-19 epidemic.

Ballot Drop Box

Overview

A ballot drop box provides a secure and convenient means for voters to return their mail ballot. A drop box is a secure, locked structure operated by election officials where voters may deliver their ballots from the time they receive them in the mail up to the time polls close on Election Day. Ballot drop boxes can be staffed or unstaffed, temporary or permanent.

Unstaffed drop boxes are typically available 24 hours a day and permanently anchored in place. Staffed drop boxes are typically available during regular business hours and monitored by trained workers during those hours.

Whether you are standing up a temporary vote-by-mail program statewide or locally, or you plan to develop a permanent program of voting primarily by mail, there are a few things to know and consider when planning for the use of ballot drop boxes.

General Considerations

Why do you need ballot drop-off locations when you are paying for return postage?

Some voters prefer to deliver their mail ballots to a drop box rather than sending them back through the mail. These voters may be motivated by lack of trust in the postal process, fear that their ballot could be tampered with, or concern that their signature will be exposed. Voters may also be concerned about meeting the postmark deadline and ensuring that their ballot is returned in time to be counted.

Ballot drop boxes and drop-off locations allow voters to deliver their ballots in person. More importantly, the availability of ballot drop boxes and drop-off locations ensures that even voters who wait until the last minute to vote or who receive their requested ballot in the mail at the last minute will be able to return their ballots in time to be counted.

Many of these last-minute voters drop their ballot off at a voting location (which may not be allowed by state law). Setting up ballot drop boxes and educating voters to use them mitigates a number of COVID-19-related risks associated with in-person voting. It also minimizes the number of people that will need to access voting locations, thereby providing more space for those who are engaged in in-person voting.

How many ballot drop boxes will you need?

At a minimum, you should have a drop box at your main county or city office building. Voters generally know the locations of these buildings and are already accustomed to voting or doing business there. Some other best practices include:

- Have one drop box for every 15,000–20,000 registered voters.
- Consider adding more drop boxes to areas where there may be communities with historically low vote by mail usage.
- Use demographic data and analysis to determine whether there should be a different formula for rural and urban locations (i.e., 1 for every 15,000 residents may be every mile in an urban area, but every 50 miles in a rural area).

To get a better idea of how many voters use ballot drop boxes when voting by mail is the primary method of voting, look at the [Ballot Drop Box Usage](#) chart put together by the Washington Secretary of State. It shows ballot drop box use as a percentage of total ballots returned for Washington state, where voting by mail has been the primary method of voting for over a decade.

Timeline: The number of drop boxes and their locations should be finalized in time to be included in the instructions with your mail ballot packet—typically 80 days before the election.

Where should ballot drop boxes be located?

Ballot drop boxes should be placed in convenient, accessible locations, including places close to public transportation routes, near or on college campuses, and public buildings, such as libraries and community centers familiar to voters and easy to find. If there is time, getting input from citizens and community groups is recommended.

All drop box locations should be evaluated for:

- Security
- Lighting (well-lit 24 hours a day)
- High visibility
- Security cameras (more on cameras in the *Security Considerations* section below)
- Accessibility
- Voter convenience
- Parking or drive-through options

There are tools that can help you evaluate locations for drop boxes. The [U.S. Census Bureau Interactive Workforce Map](#) is a tool that can help you visualize where residents of your jurisdiction work or live to help you see where drop boxes might be particularly useful. Also, the Federal Emergency Management Agency (FEMA) is offering free enterprise-level access to [ESRI geospatial mapping software](#) for all state, local, territorial, and tribal governments for 6 months.

In a COVID-19 environment, creative solutions may be required. Consider:

- Collocating a ballot drop box with drop boxes set up for taxes and public utilities.
- Partnering with businesses or locations that have already implemented social distancing practices, such as grocery stores and banks.

A great example of using existing spaces comes from [Madison, Wisconsin](#). The city's libraries were shut down owing to COVID-19. The City Clerk's office decided to capitalize on locations that were already secure and located in places familiar to city residents. Working in partnership with the library, they used the book drops from three of the city's public libraries and turned them into temporary ballot drop boxes. If you choose to do something similar, be sure to ask questions about the library's security to ensure ballots dropped off at library locations remain secure at all times.

Timeline: The locations of drop boxes should be finalized in time to be included in the instructions with your mail ballot packet—typically 80 days before the election.

Who can collect and drop off a mailed ballot on behalf of a voter?

Voters who are unable to return a ballot in person or get it to a postal facility in time for it to be counted may, depending on state law, may be able to entrust the voted ballot to someone else to help them deliver it—an agent or designee. Note that, as of March 30, 2020:

- Twenty-seven states permit an absentee ballot to be returned by a designated agent, which can be a family member, attorney, or care provider.
- Nine states permit an absentee ballot to be returned by the voter's family member.
- One state specifies that an absentee ballot can only be returned in person or by mail.
- Thirteen states do not expressly address this issue.

Some states that allow a designated agent to return a voted ballot on behalf of the voter restrict the number of ballots that can be deposited by that person at one time in a drop box.

If you are considering the use of ballot drop boxes, you should review your existing laws and requirements and determine whether emergency changes may be necessary. A full list of state practices can be found at the National Conference of State Legislators (NCSL) website listed in the *Additional Resources* section.

What equipment and supplies are needed for ballot drop boxes?

Whether you are collecting ballots just from a USPS facility, ballot drop boxes, or both, you will need ballot drop box collection teams. Ideally, these are bipartisan teams (poll workers or temporary workers) hired to drive a collection route and pick up ballots on a regular basis. Each of these teams will need:

- Vehicle such as a van or SUV where the seats can be laid flat (county owned or rented)
- Radio or cell phone
- Secure ballot collection bag/box
- Security seals
- Chain of custody procedures/forms
- Personal protective equipment (e.g. disposable, sterile gloves), as appropriate and in accordance to current CDC guidance

Timeline: Reservations should be made as soon as possible if you plan to rent vehicles, radios, or cell phones—no later than 35 days before the election.

Outlined below is a list of the typical items you will need to rent or buy, depending on the type of drop box or drop-off location you are installing.

STAFFED – INDOOR TEMPORARY BALLOT DROP BOX

When demand for a ballot drop box is low, a temporary ballot box located inside is a good solution. These boxes should be constructed of durable material and include a key or combination lock as well as a way to securely fasten the box to prevent it from being moved or tampered with. This type of box looks similar to the example pictured here. In addition to purchasing or renting the **ballot box**, you will need:

- Padlock and keys (if not included)
- Bike chain or some other way to fasten the box to prevent it from being removed (if not staffed)
- Security seals



Timeline: Depending on the lead time required by the manufacturer, boxes may need to be ordered 3 months in advance—90 days before the election.

OUTDOOR, TEMPORARY DRIVE-THROUGH DROP OFF

A drive-through drop-off location is an easy way to keep traffic flowing when demand for a ballot drop box is at its peak, especially on Election Day. This drive-through is typically set up in a parking lot or a street depending on the location.

The team staffing the site accepts ballots from voters as they pull through, depositing them directly into a ballot box. For voters who prefer placing the ballot directly into the box

themselves, the portable ballot box is brought to the car window. In addition to the supplies listed below, you will need a bipartisan team of at least two to three to support the drop-off site.

- Pop-up tent
- Table
- Chairs
- Ballot box
- Road signs
- Orange cones
- Flashlights
- High-visibility vests for workers
- Weather appropriate support—propane heater, rain gear, lanterns
- Personal protective equipment such as gloves, masks, and hand sanitizer, as appropriate and in accordance with current CDC guidance



Timeline: Most of these items can be purchased or rented locally. You will need some lead time to arrange for traffic signs and cones if they will be borrowed from law enforcement.

UNSTAFFED, 24-HOUR BALLOT DROP BOX

In high-demand areas where votes are or will be cast primarily by mail, installing a permanent ballot drop box—one that can be accessed by voters 24/7—is a good solution. These boxes should be constructed of durable material such as steel and be permanently cemented into the ground. This type of **ballot drop box** typically costs about \$6,000 each. In addition to purchasing the 24-hour box you will need:

- Video surveillance camera
- Media storage device (for recorded video)
- Decal (branding and information)
- Extra keys for opening slot and access door
- Security seals

A good example of the security considerations associated with this type of box, pictured on the right, can be found in the [California Code of Regulations](#).



Timeline: Depending on the lead time required by the manufacturer, boxes may need to be ordered 4–6 months in advance—about 150 days before the election.

Election Night and Closing Boxes

You need to give special consideration to returning temporary ballot drop boxes and locking permanent drop boxes on election night. Organizing teams from other county or city departments is one way to accomplish this. Essentially, you need bipartisan teams to be at every ballot drop-off location precisely when polls close. Their responsibilities include:

- Identifying the voter or car in line at the time polls close and ensuring they have the opportunity to deposit their ballots.
- Retrieving the temporary indoor boxes and returning them to the counting facility.
- Locking the drop slot on the 24-hour boxes and transferring ballots to a ballot transfer bag or box and returning them to the counting facility.
- Completing chain of custody forms.

Security Considerations

Ballot drop boxes must be secured and locked at all times. Only an election official or a designated ballot drop box collection team should have access to the keys and/or combination of the lock. In addition to locks, all drop boxes should be sealed with one or more tamper evident seals.

Ideally, unstaffed 24-hour drop boxes should be located in areas with good lighting and be monitored by video surveillance cameras. When this is not feasible, positioning the box close to a nearby camera is a good option. Also consider placing it in a high traffic area and inviting local law enforcement to make regular observations.

Try to place indoor drop boxes in locations where they can be monitored by a live person. When ballot boxes are unstaffed and not being monitored, the box should be securely fastened to a stationary surface or immovable object in a way that prevents moving or tampering.

Chain of Custody

- Chain of custody logs must be completed every time ballots are collected.
- All ballot collection boxes/bags should be numbered to ensure all boxes are returned at the end of the shift, day, and on election night.
- Team members should sign the log and record the date and time, security seal number at opening, and security seal number when the box is locked and sealed again.

Safety

- For drive-through locations, coordinate a traffic plan with public safety officials.
- Consider colored vests for ballot collection teams.
- Provide a radio or cell phone so you can stay in contact with collection teams at all times.

Other Considerations

Start thinking about a ballot collection plan. This should include:

- Arranging with the USPS to designate a daily collection point for returned ballots and undelivered ballots.
- Hiring bipartisan teams with clean driving records (review your jurisdiction's requirements for driving as an employee).
- Determining the frequency of collection prior to Election Day.
- Determining the frequency of collection on Election Day.
- Ensuring you have collection teams assigned to be at each location when polls close on Election Day.
- Establishing best practices for transferring ballots back to the counting facility.
- Preparing driving routes and accompanying maps or directions.
- Determining how to keep collection teams and other staff safe in a COVID-19 environment.
- Reviewing your state laws regarding electioneering, campaigning, petition signature gathering, etc. at or near a ballot drop-off site.
- Developing a plan for helping voters find ballot drop-off locations. This can include a list of locations in the mail ballot packet as well as an online lookup tool with maps and directions. Two examples are [Lewis County, WA](#) (rural county) and [King County, WA](#) (large urban county).

Additional Resources

- [Ballot Drop Box Retrieval Training Presentation](#)—A good overview of the ballot collection process from the Orange County (California) Registrar of Voters
- [Open Mic Session| Ballot Drop Boxes](#)—video that reviews best practices for ballot drop boxes in Washington State
- [Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options](#)—NCSL website dedicated to absentee voting and all-mail voting

envelope. If the clerk is not a WisVote user, the clerk should write the name of the care facility on the first line of the address field on the certificate envelope.

Absentee Ballot Returns

Only the voter may lawfully return his or her completed absentee ballot, either by mail or in person to the office of the municipal clerk, subject to two exceptions. Wis. Stat. § 6.87(4)(b)(1); *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 59, 403 Wis. 2d 607, 976 N.W.2d 519.

First, pursuant to the Voting Rights Act, any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020 (W.D. WI 2022).

Second, pursuant to section 6.86(3)(a)1., an agent may return a completed absentee ballot on behalf of a hospitalized voter by following the procedures required by that section.

When an election official is presented with an absentee ballot delivered in-person, the official may ask the following questions:

- Are you the voter? If not, then:
- Are you delivering the voter's ballot because the voter has determined that they require assistance returning their ballot due to their disability? If yes, then:
 - Are you someone other than the voter's employer, an agent of that employer, or an officer or agent of the voter's union? If yes, then the ballot can be accepted.²

Drop Boxes

The use of drop boxes is not permitted unless the drop box is staffed by the clerk and located in the office of the clerk or a properly designated alternate absentee

² This guidance was approved by the Commission on September 6, 2022, and is available here: <https://elections.wi.gov/news/guidance-absentee-ballot-return-options>.

voting site. Wis. Stat. § 6.855; *Tiegen v. Wis. Elections Comm'n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519.

In Person Requests

1. In person absentee voting in the clerk's office or another designated absentee voting location may not begin any earlier than 14 days before an election. In-person absentee voting may not take place the Monday before an election.

The clerk must specify in the Type E Notice the hours during which they will be available to receive in person absentee requests. Wis. Stat. § 6.855(2).

2. Proof of identification must be presented. The clerk must initial the absentee certificate envelope indicating that the clerk has viewed acceptable proof of identification. Proof of identification must be presented by an elector each time they vote in person absentee in the clerk's office.

Wis. Stat. § 6.86(1)(ar).

3. The applicant does not need to fill out a separate written request if they only wish to vote absentee for the current election. The absentee certificate envelope doubles as an absentee request and certification when completed in person in the clerk's office.
4. Before issuing the ballot, the clerk must review the Ineligible Voter List to confirm that the elector is eligible to vote on the day of the election.
 - a. If the name of the elector appears on the list, the clerk shall inform the elector that the elector is ineligible to vote per Department of Corrections.
 - b. If the elector agrees that they are ineligible, the absentee application should be rejected and the voter registration inactivated.
 - c. If the elector maintains that they are eligible to vote in the election, the clerk shall make a reasonable effort to contact the WEC to verify the elector's felony status.
 - i. If WEC confirms the elector is eligible to vote, the clerk should document on the Absentee Ballot Log (EL-124) that they

Attachment B

- d. The Absentee Ballot Log (EL-124) is sent to the polling place with the absentee ballots on Election Day.
8. An absentee ballot is marked by an absent voter, and sealed in an Absentee Ballot Certificate Envelope (EL-122). The Absentee Ballot Certificate Envelope (EL-122) is then completed and signed by the absentee voter, witnessed by an adult U.S. Citizen, and mailed or delivered in person to the office of the municipal clerk. Wis. Stat. § 6.87(4)(b); *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519. Note: The witness for absentee ballots completed by Military, Permanent and Temporary Overseas voters, must be an adult, but does not have to be a U.S. Citizen.
 - a. The witness must include their address. Note: The WEC may issue and distribute its guidance regarding the definition of ‘address.’ *White v. WEC*, (2022CV001008). See “Voter Correction of Incomplete Absentee Certificate Envelopes” on page 88.
 - b. The witness must include their printed name If an absentee certificate is missing the witness’s printed name, the clerk should decide how to proceed. If a clerk receives an absentee ballot with an improperly completed certificate, § 6.87(9) states that they may return the ballot to the elector whenever time permits the elector to correct the defect. A ballot may also be set aside for rejection under § 6.88(3)(b) if the “certification is insufficient.” Statute directs that the absentee ballot certificate language appear in “substantially” the form listed in § 6.87(2), which includes a field for a witness’s printed name, in addition to their signature. A clerk should determine whether a missing witness printed name renders the certification “insufficient” when determining if they should take action under § 6.88(3)(b). See also “Voter Correction of Incomplete Absentee Certificate Envelopes on page 88.”
 - a. **Litigation Note:** On July 20, 2023, a complaint was filed in the matter of *Priorities USA et al v. Wis. Elections Comm’n* (2023CV001900) in Dane County. The complaint seeks declaratory judgment that the witness requirement for absentee voting is invalid. As of December 2023, no judgement or order has been entered on the merits of this litigation. The *Priorities USA* matter is still being litigated, and this section of the manual will be updated and/or

Attachment B

supplemented consistent with further updates in that case, if any.

Caselaw Update: Return of Voted Absentee Ballots

Subject to two exceptions, only the voter may lawfully return his or her completed absentee ballot, either by mail or in person to the office of the municipal clerk. Wis. Stat. § 6.87(4)(b)(1); *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 59, 403 Wis. 2d 607, 976 N.W.2d 519.

Exceptions

First, pursuant to the Voting Rights Act, any Wisconsin voter who requires assistance with mailing or delivering their absentee ballot to the municipal clerk because of a disability must be permitted to receive such assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. *Carey v. Wis. Elections Comm'n*, 624 F. Supp. 3d 1020 (W.D. WI 2022).

Second, pursuant to section 6.86(3)(a)1., an agent may return a completed absentee ballot on behalf of a disabled voter by following the procedures required by that section.

When an election official is presented with an absentee ballot delivered in-person, the official may ask the following questions:

- Are you the voter? If not, then:
- Are you delivering the voter's ballot because the voter has determined that they require assistance returning their ballot due to their disability? If yes, then:
- Are you someone other than the voter's employer, an agent of that employer, or an officer or agent of the voter's union? If yes, then the ballot can be accepted.⁵

The use of drop boxes is not permitted unless the drop box is staffed by the clerk and located in the office of the clerk or a properly designated alternate absentee voting site. Wis. Stat. § 6.855; *Tiegen v. Wis. Elections Comm'n*, 2022 WI 64, 403 Wis. 2d 607, 976 N.W.2d 519. The office of the municipal

⁵ This guidance was approved by the Commission on September 6, 2022, and is available here: <https://elections.wi.gov/news/guidance-absentee-ballot-return-options>.

clerk means any physical area that is controlled by the municipal clerk in order to carry out their statutory duties.

Correcting Defective Absentee Certificate Envelopes

Voter Correction of Incomplete Absentee Certificate Envelopes

Disclaimer: This section of the manual covers a clerk’s ability to return absentee ballots to voters under § 6.87(9), or to reject absentee ballots under § 6.88(3)(b) when there are defects on the certificate envelope. For information on a municipal clerk’s ability to return absentee ballots to electors under § 6.86(5) when the ballot is spoiled or damaged, see “Spoiling and Replacement Ballots” on page 92. **Be advised that these two sections of the manual are not interchangeable.**

Municipal clerks should make every effort to review absentee certificate envelopes as they receive voted absentee ballots from voters so that they can choose to exercise their authority under § 6.87(9) or § 6.88(3) ahead of Election Day.

The clerk should document any certificate errors on the Absentee Ballot Log (EL-124).

If the information on the absentee certificate envelope is incomplete, or if the certificate is missing, the clerk has two options for how to proceed, each of which is discussed further in the numbered sections below:

(1) Returning the Ballot to the Voter - Time permitting, they may attempt to return the ballot and incomplete certificate envelope to the voter for the voter to correct the defect; or

(2) Setting Aside the Ballot for Rejection – Rejecting a ballot is governed by Wis. Stat. 6.88(3)(b).

(1) Returning the Ballot to the Voter – Wis. Stat. § 6.87(9)

If the information on the absentee certificate envelope is incomplete, or if the certificate is missing, the clerk “may return the ballot to the



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 July 11, 2024, Commission Meeting
TO: Members, Wisconsin Elections Commission
FROM: Brandon Hunzicker, Staff Attorney
SUBJECT: Notice for a Preliminary Hearing and Comment Period and Possible Quorum

Introduction:

During the June 27, 2024, Commission meeting, the Commission directed staff to submit an emergency scope statement concerning the conduct, regulation, and accommodation of election observers to the Governor for approval. On July 3, 2024, the Governor approved the scope statement, which was published in the Administrative Register on July 8, 2024.

Following this memo are the scope statement, the Governor's approval letter, and a draft notice for a preliminary hearing and comment period that also contains a notice of possible quorum. If the Commission approves the draft notice, it can be published, and staff can hold the hearing and receive comments.

Discussion:

The Joint Committee for the Review of Administrative Rules (JCRAR) has the authority, under Wis. Stat. § 227.136, to order the Commission to hold a preliminary hearing and comment period to receive public comment and feedback on a statement of scope. The Commission received this order on July 9.

Under Wis. Stat. § 227.136(2) the notice must be approved by the Commission and state the date, time, and place of the preliminary public hearing, as well as the place where comments may be submitted and the deadline for submission. The notice below would hold the preliminary hearing on July 19, 2024, from 1–3 p.m. via Zoom, and would allow comments to be submitted to staff from the time the notice is published until 4:30 p.m. on July 19. Commissioners do not need to attend the hearing, but the notice of a possible quorum would allow all Commissioners to attend. A summary of all oral comments, as well as all written comments, will be presented to the Commission for review at a future meeting, and the Commission could give final approval to the scope statement at that time. Only after that final approval of the scope statement can staff work on the rule.

Recommended Motion:

The following notice of a preliminary public hearing and comment period and possible quorum, as modified during this meeting, is approved for publication in the Administrative Register, and staff is directed to conduct the preliminary hearing on the emergency scope statement concerning the conduct, regulation, and accommodation of election observers. The hearing shall be held via Zoom on July 19, 2024, from 1–3 p.m. with comments accepted until 4:30 p.m. that same day.

Wisconsin Elections Commissioners

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

Administrator
Meagan Wolfe

STATEMENT OF SCOPE
Pursuant to Wis. Stat. § 227.24
WISCONSIN ELECTIONS COMMISSION

Rule No.: EL Ch. 4 Election Observers

Relating to: Conduct, Regulation, and Accommodation of Election Observers

Rule Type: Emergency

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a).

The preservation of public peace, safety, and welfare of Wisconsin voters, observers, and election officials necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. The election cycle for a major presidential election year is already underway, which is expected to produce high voter turnout and high levels of scrutiny on Wisconsin’s election procedures. Emergency rulemaking will provide the Commission an opportunity to address election administration needs ahead of the November 2024 general election. The Commission’s permanent rule on election observers cannot take effect prior to being reviewed by the legislature, which will not officially consider the rule as received until January of 2025. Unless the Commission promulgates emergency rules under § 227.24(1)(a), Wisconsin will not have rules in place concerning election observers for the upcoming General Election.

RULE ANALYSIS:

1. A description of the objective of the proposed rule.

The Wisconsin Elections Commission (“Commission”) proposes to create Wis. Admin. Code EL Ch. 4 (“EL Ch. 4”), pertaining to the conduct, regulation, and accommodation of Election Observers. The Commission seeks to promulgate rules that set forth standards of conduct applicable to persons who are present at a polling place, or elsewhere, for the purpose of observing all public aspects of an election.

2. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Existing Policy:

The Commission currently advises election officials, observer groups, and individuals on observer conduct using an expired version of emergency rules that were in place under the former Government Accountability Board. The Commission advises that the expired rules are the Commission’s interpretation of the public’s right to access under Wis. Stat. § 7.41.

Proposed Policy:

The Commission proposes to codify a permanent rule as required by Wis. Stat. § 7.41(5). The rule will expand upon items addressed in the statute that need clarification, such as: what interactions are permissible between observers, voters, and election officials; how a chief inspector may restrict which areas are open to observers; and what may count as disruptive behavior.

Alternatives:

If the Commission does not create EL Ch. 4, the current advice provided to local election officials, observer groups and individuals will remain, without the force and effect of an underlying administrative rule.

3. Detailed explanation of statutory authority for the rule (including the statutory citation and language).

Wis. Stat. § 7.41(5) states that the Commission “shall promulgate rules that are consistent with the requirements of sub. (2) regarding the proper conduct of individuals exercising the right under sub. (1), including the interaction of those individuals with inspectors and other election officials.”

Wis. Stat. § 5.05(1) states that the 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.” Pursuant to such responsibility, the Elections Commission may “[p]romulgate 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 campaign financing, or ensuring their proper administration.” Wis. Stat. § 5.05(1)(f).

Wis. Stat. § 7.08(3) states that the Commission shall “[p]repare and publish separate from the election laws an election manual written so as to 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.”

Wis. Stats. § 227.11(2)(a) states that “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

4. An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it would take approximately 30 staff hours to promulgate the administrative rule.

5. A description of all of the entities that may be affected by the proposed rule.

The proposed rule will affect and is likely to provide procedural clarity, authority, and security to municipal clerks, other local election officials, media, accessibility advocates, local election inspectors, and all organizations and individuals that wish to observe elections in Wisconsin by maintaining a presence at polling places. To a significant degree, the proposed rule will codify existing practices, and thus will require only moderate compliance outreach to observers, media, accessibility advocates, and the public as well as training to clerks and local election officials. The effect of the proposed rule, and subsequent processes, will have little to no impact on small businesses.

6. A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

There are no existing federal laws that attempt to regulate the right of citizens to observe elections at polling places or attempt to regulate the conduct of persons who act as observers at polling places.

Agency Contact Person: Brandon Hunzicker, Staff Attorney
(608) 267-0714; brandon.hunzicker@wisconsin.gov

Meagan L.M. Wolfe

Meagan Wolfe
Administrator, Wisconsin Elections Commission
June 28, 2024
Date Submitted



Tony Evers

Office of the Governor | State of Wisconsin

July 3, 2024

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Department of Safety and Professional Services, submitted June 12, 2024, relating to plumbing code review (Wis. Admin. Code chs. SPS 325, 361-366, and 381-387); and
- A statement of emergency scope by the Wisconsin Elections Commission, submitted June 24, 2024, relating to conduct, regulation, and accommodation of election observers (Wis. Admin. Code ch. EL 4).

On this day, I approved the following proposed administrative rule pursuant to Wis. Stat. § 227.185:

- A proposed emergency rule by the Hearing and Speech Examining Board, submitted April 23, 2024, relating to implementation of the audiology and speech-language pathology interstate compact (Wis. Admin. Code ch. HAS 6).

Please direct any questions about this letter to my policy director, Katie Domina.

Sincerely,

Tony Evers
Governor

cc: Mel Barnes, chief legal counsel (mel.barnes@wisconsin.gov)
Katie Domina, policy director (katherine.domina1@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spsmail.wi.gov)
DSPS (DSPSAdminRules@wisconsin.gov)
Brandon Hunzicker, WEC, (brandon.hunzicker@wisconsin.gov)

Notice of Preliminary Public Hearing and Comment Period

The Wisconsin Elections Commission (WEC) announces that it will hold a preliminary public hearing and comment period on an emergency statement of scope, SS 072-24, concerning the conduct, regulation, and accommodation of election observers. Members of the public may attend the hearing and provide their perspective on the scope statement. Members of the public may also submit written comments as described below at any time before 4:30 p.m. on July 19, 2023.

Hearing Information

Topic: Preliminary Public Hearing on Emergency Scope Statement Concerning Election Observers

Date: July 19, 2024

Time: 1:00 p.m. to 3:00 p.m.

Location: *see below for virtual attendance options*

Virtual Attendance

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/81448461624?pwd=cO3HKrKibwxtZuDp0aURZOck5M5U8J.1>

Passcode: 782888

Or One tap mobile :

+13017158592,,81448461624#,,,,*782888# US (Washington DC)

+13052241968,,81448461624#,,,,*782888# US

Or Telephone:

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

+1 301 715 8592 US (Washington DC); +1 305 224 1968 US; +1 309 205 3325 US

+1 312 626 6799 US (Chicago); +1 646 558 8656 US (New York); +1 646 931 3860 US

+1 719 359 4580 US; +1 720 707 2699 US (Denver); +1 253 205 0468 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

Webinar ID: 814 4846 1624

Passcode: 782888

International numbers available: <https://us06web.zoom.us/j/81448461624?pwd=cO3HKrKibwxtZuDp0aURZOck5M5U8J.1>

Accessibility

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

Submittal of Written Comments

The statement of scope may be reviewed at

https://docs.legis.wisconsin.gov/code/scope_statements/all/072_24. Written comments may be submitted directly to the WEC at brandon.hunzicker@wisconsin.gov no later than 4:30 p.m., July 19, 2024.

Notice of Possible Quorum

Wisconsin Elections Commission

Public Hearing Seeking Comment on Administrative Rule Emergency Scope Statement
Friday, July 19, 2024
1:00 p.m. to 3:00 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 an emergency scope statement 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: July 11, 2024



Marge Bostelmann
Commission Secretary, Wisconsin Elections Commission