

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
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