

Wisconsin Elections Commission

Meeting of the Commission
Wednesday, May 23, 2017
10:00 A.M.

Agenda
Open Session

Teleconference Meeting

Wisconsin Elections Commission Offices
212 E. Washington Avenue, Third Floor
Madison, Wisconsin

- A. Call to Order**
- B. Administrator’s Report of Appropriate Meeting Notice**
- C. Minutes of Previous Meetings – March 8, 2017 Teleconference 3**
– March 14, 2017 5
- D. Personal Appearances Regarding Agenda Items Only (Time reserved for personal appearances may be limited at the discretion of the Chair)**
- E. Administrative Rules 15**
- F. IT Contracted Services 89**
- G. Administrator’s Report**
- H. Closed Session**
 - 1. Litigation Update**

19.85 (1) (g) The Commission may confer with legal counsel concerning litigation strategy.

WISCONSIN ELECTIONS COMMISSION

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



COMMISSIONERS

BEVERLY R. GILL
JULIE M. GLANCEY
ANN S. JACOBS
JODI JENSEN
STEVE KING
MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

Wisconsin Elections Commission
Wisconsin Elections Commission Offices
212 E. Washington Avenue, Third Floor
Madison, Wisconsin
11:00 a.m. Wednesday, March 8, 2017

Open Session Minutes

Present: Commissioner Mark Thomsen and Commissioner Jodi Jensen (in person); and Commissioner Ann Jacobs, Commissioner Beverly Gill, Commissioner Julie Glancey and Commissioner Steve King (all by telephone)

Staff present: Michael Haas, Nathan Judnic, Sharrie Hauge, Gamze Ligler and Reid Magney

A. Call to Order

Commission Chair Mark Thomsen called the meeting to order at 11:02 a.m.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Michael Haas informed the Commissioners that proper notice was given for the meeting.

C. Personal Appearances

Dane County Clerk Scott McDonell of Madison appeared to discuss the possible impact of losing six positions on the Commission's ability to serve clerks and voters.

Deputy Clerk Chris Astrella of the Village of Summit appeared on behalf of the Wisconsin Municipal Clerks Association to discuss the many ways that the Commission staff has helped him and other WMCA members in administering elections over the years.

D. Elections Commission 2017-2019 Biennial Budget Request

Administrator Haas made an oral presentation based on a written report starting on page 3 of the March 8, 2017 Commission meeting materials. He discussed the current staff vacancies, the Commission's inability to fill them prior to the November 2016 General Election, the staff's heavy work load during that time, and the need for all 22 federally-funded positions to carry out the agency's responsibilities in the future.

Administrator Haas and Commissioners discussed the upcoming Joint Committee on Finance agency briefing meetings, as well as the history of federal funding for elections. They also discussed writing letters to the Governor, legislative leaders and the members of the Joint Committee on Finance regarding the budget and the need for full funding of the 22 positions.

MOTION: Direct staff to draft letters regarding the Commission's biennial budget request to the Governor and the members of the Joint Committee on Finance for Commissioners to review and sign at the meeting on March 14. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

E. Adjourn

MOTION: To adjourn. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

The Commission adjourned at 11:54 a.m.

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The next regular meeting of the Wisconsin Elections Commission is scheduled for Tuesday, March 14, 2017, at the commission's offices in Madison, Wisconsin beginning at 10:00 a.m.

March 8, 2017 Wisconsin Elections Commission meeting minutes prepared by:

Reid Magney, Public Information Officer

March 21, 2017

March 8, 2017 Wisconsin Elections Commission meeting minutes certified by:

Beverly Gill, Commission Secretary

May 23, 2017

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<u>Summary of Significant Actions Taken</u>	<u>Page</u>
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Q. Approved Report to Legislator of Election Fraud	4
K. Approved 2017 Legislative Agenda	5
L. Approved Public Records Policy	8
P. Approve Agency Annual Report	9

Present: Commissioner Mark Thomsen, Commissioner Ann Jacobs, Commissioner Jodi Jensen, Commissioner Steve King, Commissioner Beverly Gill and Commissioner Julie Glancey

Staff present: Michael Haas, Ross Hein, Nathan Judnic and Reid Magney

A. Call to Order

Commission Chair Mark Thomsen called the meeting to order at 10:02 a.m.

B. Administrator's Report of Appropriate Meeting Notice

Administrator Michael Haas informed the Commissioners that proper notice was given for the meeting.

C. Personal Appearances

Jim Zellmer of Madison appeared on his own behalf to discuss the fees for Wisconsin voter file data, which he said are significantly higher than other states. He urged the Commission to lower fees so local candidates could have greater access to the data they need to run for office.

Andrea Kaminski of Madison appeared on behalf of the League of Women Voters of Wisconsin to express concern about the number of 17-year-old people who mistakenly voted in the 2016 Presidential Preference Primary. She urged to Commission to support more and better voter education and training.

Commissioners and Ms. Kaminski briefly discussed misinformation on social media before the presidential primary that caused confusion about Wisconsin's voting rules versus other states' rules.

Karen McKim of Waunakee appeared on behalf of Wisconsin Election Integrity to invite Commissioners and staff to attend a conference at UW-Milwaukee on March 18 and 19 at which the group's recount findings will be analyzed. She also stated that during the presidential recount, the performance of Wisconsin election officials was head and shoulders above the two other states petitioned for recount by the Stein campaign.

Brown County Clerk Sandy Juno of Green Bay appeared to discuss electronic poll books, which she said would be much less expensive if the Commission can develop the software and jurisdictions can buy the hardware, rather than relying on commercial vendors. If the state declines to develop a system, she urged the Commission to do a statewide request for proposals in order to get a better price from vendors.

D. Minutes of the Previous Meeting

MOTION: Approve the minutes of the January 10, 2017 Wisconsin Elections Commission Meeting. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

E. Election Night Results Reporting

Legal Counsel Nathan Judnic made an oral presentation based on a written report starting on page 7 of the March 14, 2017 Commission meeting materials regarding requirements in 2015 Wisconsin Act 261 for online reporting of all election results on Election Night by county clerks. Some county clerks who do not receive local results from municipal clerks have expressed concerns about their ability to comply with the law.

Commissioners and staff discussed the legislature's directive for municipal clerks to report all unofficial election results to county clerks no later than two hours after the votes are tabulated, and for county clerks to post all results online within two hours of receiving them from municipal clerks. They further discussed the challenges faced by some county clerks when all of their municipalities do not use the same kinds of voting systems. Commissioner Jacobs

suggested that clerks could scan and post tally sheets, rather than totals, to comply with the Act's timeliness requirements. Chair Thomsen asked whether staff could come up with solutions to help clerks comply within seven days.

Administrator Haas and Elections Supervisor Ross Hein discussed two solutions to assist clerks: printing call-in sheets from WisVote and/or using the Canvass Reporting System.

MOTION: Direct municipal clerks to provide all election returns to the county clerk, including results of local contests. The county clerk is then to post to the county's website all such returns within two hours of receipt. Direct staff to develop an action plan by March 21 to help ease the burden on clerks. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

F. Electronic Poll Books

Elections Specialist Richard Rydecki and WisVote Specialist Sarah Whitt gave an oral status report based on a memorandum starting on page 13 of the March 14, 2017 Commission meeting materials regarding electronic poll books (EPB).

Commissioners and staff discussed the status of a cost-benefit analysis of EPB and requirements for a statewide system. Chair Thomsen discussed a possible timeline for development of a system, as well as the need for adequate time at the Commission's next meeting to discuss the project.

G. Voter Registration List Maintenance

Ms. Whitt and WisVote Specialist Ann Oberle made an oral presentation based on a written report starting on page 17 of the March 14, 2017 Commission meeting materials regarding voter list maintenance procedures required by statutes to identify, notify and possibly inactivate voters who have not voted in four years in compliance with statutory requirements.

MOTION: Approve the preliminary Four Year Voter Record Maintenance plan, as described in the Voter Registration List Maintenance staff memo prepared for the March 14, 2017 meeting of the Elections Commission, and direct staff to proceed accordingly to have the mailing completed within the statutory timeframes. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

Ms. Whitt briefed the Commission on new procedures for list maintenance activities required because the state recently joined the Electronic Registration Information Center (ERIC). These list maintenance activities involve identifying and inactivating voters who have died or moved.

Commissioners and staff discussed the roles that the WEC and municipal clerks play in list maintenance.

MOTION: Approve the preliminary ERIC List Maintenance plan, as described in the Voter Registration List Maintenance staff memo prepared for the March 14, 2017 meeting of the

Elections Commission, and direct staff to proceed accordingly. Moved by Commissioner Glancey, seconded by Commissioner Gill. Motion carried unanimously.

H. Online Voter Registration Initiative

Ms. Whitt and Elections Specialist Meagan Wolfe made an oral presentation based on a written report starting on page 17 of the March 14, 2017 Commission meeting materials regarding implementation of online voter registration, as required by 2015 Wisconsin Act 261. Ms. Wolfe demonstrated how online registration works as part of the MyVote Wisconsin website.

MOTION: Pursuant to 2015 Wisconsin Act 261, the Elections Commission determines that the implementation of the Online Voter Registration system is complete and that the performance of the system is satisfactory. Moved by Commissioner Jacobs, seconded by Commissioner Jensen. Motion carried unanimously.

I. Chapter 12 Complaints Policy

Legal Counsel Nathan Judnic made an oral presentation based on a written report starting on page 33 of the March 14, 2017 Commission meeting materials regarding complaints filed under § 5.05 alleging violations of Wis. Stat. Ch. 12, which defines criminal violations and establishes criminal penalties for election-related activity that may be prosecuted only by district attorneys and not the WEC. The staff recommended procedures for handling complaint inquiries from the public as well as sworn complaints, and requested Commission approval.

MOTION: Authorize staff to provide the options outlined in the staff memorandum to individuals who contact the Commission about potential violations of Ch. 12 but have not filed a sworn complaint. Also, direct staff to follow the procedures outlined in the memorandum if the Commission receives a sworn complaint alleging criminal violations of Ch. 12. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

J. Administrative Rules

Mr. Judnic made an oral presentation based on a written report starting on page 39 of the March 14, 2017 Commission meeting materials regarding the status of administrative rule promulgation.

Chair Thomsen suggested the Commission hold a special teleconference meeting focused on administrative rules. Commissioners agreed to meet at 10 a.m. on Tuesday, May 23.

Chair Thomsen called a half-hour recess for lunch at approximately 12:10 p.m.

Q. Report to Legislature of Alleged Voter Fraud Referrals

(This item was taken out of agenda order.)

Mr. Judnic made an oral presentation based on a written report starting on page 93 of the March 14, 2017 Commission meeting materials regarding the statutorily-required report of suspected election fraud, irregularities or violations. He discussed the large number of referrals of 17-year-old voters who registered and voted at the Spring 2016 Presidential Preference Primary.

Commissioners and staff discussed the report.

MOTION: Direct Commission staff to submit the cover letter and report titled “Report of Suspected Election Fraud, Irregularities or Violations” to the Legislature per Wis. Stat. §§ 7.15(1)(g) and 13.172(2). Moved by Commissioner Glancey, seconded by Commissioner Gill. Motion carried unanimously.

MOTION: Direct Commission staff to schedule this report to be submitted to the Commission for review and direction in the spring of each year, with the next report covering referrals made from February 16, 2017 through February 15, 2018. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

K. Legislative Agenda

Administrator Haas made an oral presentation based on a written report contained in supplemental materials for the March 14, 2017 Commission meeting regarding the proposed legislative agenda. Staff maintains a list of potential legislative changes based on feedback from legislators, county and municipal clerks, and members of the public. These are presented to the Commission as recommended changes to the statutes for the Legislature to consider.

Commissioners reviewed the list and made motions on individual items.

MOTION: Approve recommendation #1 regarding Electronic Poll Books:

A. § 5.02: Add definitions of “electronic poll book” and “electronic poll list” to the statutory definitions.

B. § 7.23(1)(e): Add language permitting electronic poll books to be cleared or erased after the deadline for filing a recount petition has passed but requiring the transfer of all data required to reproduce the voter list to a disk or other recording medium which may be destroyed 22 months after the election, consistent with other retention requirements.

Moved by Commissioner King, seconded by Commissioner Glancey. Motion carried unanimously.

MOTION: Approve recommendation #4 regarding §§ 8.15(1) and 10.06(1)(h) for the window for circulation of nomination papers and the deadline for the Commission to certify the candidates to appear on the Partisan Primary ballot. Commission staff recommends changing the first day to circulate nomination papers from April 15 to April 10, which would keep the first day to circulate nomination papers still after the spring election, and moving the filing deadline from

June 1 to the last Tuesday in May. Moved by Commissioner Jacobs, seconded by Commissioner King. Motion carried unanimously.

MOTION: Approve recommendation #12 regarding the requirement in §§ 6.22(5) and 6.24(7) for a U.S. citizen to witness an absentee ballot. The Legislature could consider modifying or removing the witness requirement to ensure that military and permanent overseas absentee voters can vote their ballot without needing to find another US citizen. Moved by Commissioner Jacobs, seconded by Commissioner Glancey. Motion carried unanimously.

MOTION: Approve recommendation #15 regarding the requirement in §§ 6.275 and 6.33(5), setting deadlines for reporting certain statistics, and recording voter participation and registration following an election, respectively. The Legislature could clarify that the deadline for reporting statistics coincides with the deadline to enter voter registrations and record voter participation in WisVote, as defined in Wis. Stat. § 6.33(5). Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

MOTION: Approve recommendation #20 regarding the requirement in § 6.34(3) outlining the types of acceptable documents for proof of residence (POR) for the purpose of voter registration. The Legislature could specifically authorize electronic proof of residence to be consistent with current practices and Government Accountability Board policy, as well as clarify the types of authorized POR to include other modern and common types of documents such as a cellphone bill, or internet service bill, or a document from a financial institution. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

MOTION: Approve recommendation #22 regarding the requirement in § 6.36(1)(b)1.a establishing information related to a voter record that must remain confidential. The Legislature could consider revising this provision in order to add phone number and email address to the list of confidential information that is not available for release through public record requests. The Legislature may also wish to clarify that a state-issued identification card number is also confidential by replacing *operator license number* with *driver license or state-issued identification card number*. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried.

MOTION: Approve recommendation #33 regarding the requirement in § 7.41, which provides for the public's right to be present at the clerk's office, alternate absentee voting sites and polling places in Wisconsin to observe all public aspects of the election process. The Legislature could consider explicitly setting forth the Legislature's position on photography and video recording in these places in this section. Moved by Commissioner Glancey, seconded by Commissioner Jacobs. Motion carried unanimously.

MOTION: Approve recommendation #42 regarding the prohibition in § 12.13(1)(f) of an elector from showing any person his or her marked ballot. Recent court cases have called into question the constitutionality of such a prohibition, particularly in the context of publicly sharing photos of a voted ballot via social media. The Legislature could consider revising or repealing this provision to avoid unnecessary litigation. Moved by Commissioner Jacobs, seconded by Glancey. Motion carried unanimously.

MOTION: Approve recommendation #54 regarding the requirement in § 6.50(2r)(b) for the information the Commission must provide regarding the four-year voter list maintenance process. Specifically, this item is the number of postcards returned to the Commission as undeliverable. While the Commission would be sending out the postcards, the undeliverable mailings go to the municipal clerk. The Legislature could correct this issue by either striking the words to the commission, or replacing that phrase with to the (municipal) clerk. Moved by Commissioner Jacobs, seconded by Commissioner King. Motion carried unanimously.

MOTION: Approve recommendation #55 regarding the requirement in § 6.96, which relates to the voting procedure for electors voting pursuant to a federal court order. The Legislature could revise this provision to require that the same notation shall appear resulting from an extension of voting hours by a circuit court as currently required after a federal court extension. Moved by Commissioner Jacobs, seconded by Commissioner King. Motion carried unanimously.

MOTION: Approve recommendation #59 regarding the requirement in § 7.52(3)(b), which lists the reasons for which an absentee ballot may be rejected by the board of absentee ballot canvassers. 2015 Act 261 recently added the lack of the witness' address to the list of reasons an absentee ballot may be rejected at the polls, but did not make a similar adjustment to this section. For consistency of administration, the Legislature could consider modifying 7.52(3)(b) to include this additional reason for rejection of the absentee ballot. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

MOTION: Approve recommendation #64 regarding the requirement in § 59.23(2)(s), which requires county clerks to provide a list of local officials to the Secretary of State. This information would help the Commission maintain accurate information on current office holders and election administration. The Legislature could revise this provision by requiring county clerks to also provide this list to the Commission, or require the Secretary of State to forward a compiled report to the Commission. Moved by Commissioner Jacobs, seconded by Commissioner Glancey. Motion carried unanimously.

MOTION: Approve recommendation #65 regarding the requirement in § 66.0217(9), which requires a municipality that annexes territory to file a copy of the related ordinance with the Secretary of State. The Legislature could add the Commission to the list of agencies that receive a copy of the ordinance, certificate and plat from the Secretary of State in order to ensure accurate and current district boundaries recorded in the statewide voter registration system. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

Chair Thomsen asked staff to come back to the Commission at its June 2017 meeting with more information about recommendation #2 regarding voting equipment.

Commissioner Jacobs said she would like more discussion on recommendation #25 regarding assistance to an elector in marking a ballot.

L. Public Records Policy

Administrator Haas made an oral presentation based on a written report starting on page 49 of the March 14, 2017 Commission meeting materials regarding staff's recommendation for a revised public records notice that reflects the change from the Government Accountability Board to the Wisconsin Elections Commission. The revised policy also reduces the agency's prices for copies and scans of records, bringing it into line with other state agencies.

MOTION: Approve the draft Wisconsin Elections Commission Public Records Notice and authorize staff to prominently display it at the Commission office and post it on the agency website. Moved by Commissioner Glancey, seconded by Commissioner Gill. Motion carried unanimously.

M. Agency Budget Request

Administrator Haas presented letters drafted by staff at the Commission's request to the Governor, legislative leaders and members of the Joint Committee on Finance regarding the Wisconsin Elections Commission's 2017-2019 Biennial Budget Request. The letters thank the Governor for recommending GPR funding of 16 of 22 positions for which federal funding will expire in 2018, and ask legislators to consider providing additional funding for the remaining six positions. After minor changes, Commissioners all signed the letters.

N. Analysis of 2016 Presidential Recount

Mr. Hein made an oral presentation based on a written report starting on page 53 of the March 14, 2017 Commission meeting materials regarding staff's analysis of county board of canvassers' minutes from the presidential recount. He described the recount as a success story because it confirmed the accuracy of the election results, but said it also provided information staff can use to adjust training to address the problems identified. He said there were issues with the requirement for witness addresses on absentee ballot certificates, tabulation of votes for registered write-in candidates, and the incorrect input of numbers to the state's canvass system.

The report was made for information only, and the Commission took no action.

O. Voter Felon Audit Report

Ms. Oberle provided an oral update based on a memorandum starting on page 57 of the March 14, 2017 Commission meeting materials regarding the ongoing voter felon audit from the November 2016 General Election, which initially identified 93 possible violations. She said that so far, 23 cases have been closed following initial investigation because they were not serving a felony sentence at the time of the election or were an incorrect match. Staff continues to work on the remaining 70 cases.

Commissioners and staff discussed the history of voter felon audits, the process for getting information from the Department of Corrections and identifying potential violations, and the amount of staff time devoted to the audit.

P. Agency Annual Report

Administrator Haas requested Commissioners approve the 2016 Annual Report, starting on page 61 of the March 14, 2017 Commission meeting materials.

MOTION: Approve submission of the Wisconsin Elections Commission’s 2016 Annual Report to the Governor and the Legislature. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

R. Legislative Status Update

Administrator Haas directed Commissioners to the Legislative Status Update, starting on page 101 of the March 14, 2017 Commission meeting materials. He briefly discussed pending bills regarding recounts and allowing public officials to serve as election inspectors.

Commissioners and staff discussed the status of the appointments of Commissioners Gill and Glancey, which Administrator Haas said are scheduled for Senate committee hearings later in March.

S. Commission Staff Update

Administrator Haas directed Commissioners to the Staff Update, starting on page 105 of the March 14, 2017 Commission meeting materials. He highlighted items relating to the voting equipment audit and recent staff changes. He noted the departure of WisVote Specialist Jodi Kitts for a position at the Department of Administration, and Elections Supervisor Ross Hein, who is leaving for a position at the Department of Workforce Development. He thanked Mr. Hein for the excellent work he has done with the former State Elections Board and Government Accountability Board, in addition to the Wisconsin Elections Commission. Mr. Hein thanked everyone for the joy and professional growth he experienced working in elections.

T. Per Diem Authorization

MOTION: Approve one and one-half days of per diem for preparation and the March 14, 2017 Wisconsin Elections Commission meeting. Moved by Commissioner King, seconded by Commissioner Jacobs. Motion carried unanimously.

U. Closed Session

Adjourn to closed session as required by statutes to confer with counsel concerning pending litigation

MOTION: Move to closed session pursuant to § 19.85(1)(g) to confer with counsel concerning pending litigation. Moved by Commissioner Jacobs, seconded by Commissioner Gill.

Roll call vote: Gill: Aye Glancey: Aye
King: Aye Jensen: Aye

Jacobs: Aye Thomsen: Aye

Motion carried unanimously. The Commission recessed at 3:42 p.m. and convened in closed session at 3:45 p.m.

V. Adjourn

The Commission adjourned in closed session at 4:01 p.m.

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The next regular meeting of the Wisconsin Elections Commission is scheduled for Tuesday, June 20, 2017, at the commission's offices in Madison, Wisconsin beginning at 10:00 a.m.

March 14, 2017 Wisconsin Elections Commission meeting minutes prepared by:

Reid Magney, Public Information Officer

April 28, 2017

March 14, 2017 Wisconsin Elections Commission meeting minutes certified by:

Beverly Gill, Commission Secretary

May 23, 2017

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ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: Administrative Rules Overview

This memorandum is intended to provide a roadmap of the administrative rule items that the Commission staff is recommending the Commission take up at the May 23, 2017 special meeting.

Following this overview memorandum are individual memorandums on each of the proposed rules or group of rules. The Commission staff is hopeful that this approach will break the long list of rules that are at different stages in the process into more manageable pieces for questions and discussion.

Group 1 – Statements of Scope Submitted to Governor’s Office for Approval

- Four (4) Statements of Scope were sent to the Governor’s Office for approval: EL Ch. 4 (election observers), EL 3.60 (absentee ballot subscription service), EL Ch. 13 (training for election inspectors and special voting deputies), and EL 6.06 (curbside voting procedures).
- The staff received approval from the Governor’s Office for all of these rules on May 5, 2017. The statements will be published in the Administrative Register for the required 10 days and they will be brought back to the Commission at its June meeting for review and approval.

Group 2 – Notice of Proposed Rulemaking

- The proposed rule language for EL Ch. 6 (sufficiency of EthCF-1 form, and submission of documents by email) has been approved by the Legislative Reference Bureau for submission to the Legislative Council Clearinghouse.

- The proposed rule language for EL Ch. 21 (written advice) has been approved by the Legislative Reference Bureau for submission to the Legislative Council Clearinghouse. The language here is quite simple, in that the Commission staff has proposed repealing the chapter in its entirety.
- Per Wis. Stat. § 227.14 (4m), the Commission must approve the notice that is sent to the Legislative Reference Bureau and the Secretary of the Department of Administration which is published in the Register and informs the public that a rule has been submitted to the Legislative Council Rules Clearinghouse. The Commission staff will ask the Commission to approve of the prepared notices for these two rules, along with the proposed rule orders which contain the language of the proposed rule changes.

Group 3 – Request for Permission to Draft Statements of Scope and Submission to Governor’s Office

- The Commission staff will request permission to draft a Statement of Scope that will combine former G.A.B. Ch. 5 (ballot and electronic voting system security) and EL Ch. 7 (approval of electronic voting equipment) and promulgate the final combined rule as EL Ch. 7 that will address both ballot and equipment security as well as the state approval process for voting equipment.
- The Commission staff will request permission to draft a Statement of Scope to amend current EL Ch. 12 to include provisions that outline the responsibilities of clerks maintaining records in statewide voter registration system.
- The Commission staff will request permission to draft a Statement of Scope which will amend current EL Ch. 20 to make clear that this chapter only applies to complaints filed against local election officials under Wis. Stat. § 5.06. All other complaints are governed by the procedures set forth in Wis. Stat. § 5.05.

Group 4 – Rules the Commission Staff Believe Should be Placed on Hold Pending the *One Wisconsin Appeal*

- EL 3.10, 3.11, 3.12 and 3.20 contain references to special registration deputies which have been eliminated in Wisconsin, therefore those references need to be removed from those chapters.
- The issue is that special registration deputies and their elimination is part of the *One Wisconsin* case. Commission staff believes it makes sense to leave the rules how they are (with the current Code Editor Note and cross-references to the statutory section deactivated) until that case has been resolved to eliminate a potential back and forth promulgation situation.
- The Commission staff requests confirmation from the Commission as to this proposed approach for the treatment of current EL 3.10, 3.11, 3.12 and 3.20.

Group 5 – Legislation Sought in Lieu of Rulemaking

- Commission staff has identified five proposed rules and/or topic areas that appear to be good candidates for legislation instead of administrative rules.
- The Commission staff requests confirmation from the Commission that efforts to assist in the drafting of legislation in these areas, in lieu of administrative rulemaking, should continue.

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ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL Ch. 4 – Election Observers

This proposed rule would regulate the conduct of election observers at polling locations and other locations at which ballots are cast and processed.

The priority assigned to this rule by the Commission staff is “High.”

The Statement of Scope for this proposed rule was submitted to the Governor’s Office on March 23, 2017. The Governor’s Office approved the Statement of Scope on May 5, 2017. The Statement of Scope will now be published by the Legislative Reference Bureau in the Administrative Register. The Statement of Scope must be published for at least 10 days before the Commission may act on it. There is no proposed action on this rule at this time. Commission staff will bring this Statement of Scope to the Commission at its June 2017 meeting for review and approval.

The Governor’s approval letter and the Statement of Scope as approved by the Governor’s office are attached to this memorandum.



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 5, 2017

Michael Haas
Commission Administrator
Wisconsin Elections Commission
212 E Washington Ave
Madison, WI 53703

**RE: Scope Statement for EL 4 relating to
conduct and regulation of election observers to monitor
compliance with election laws by local election officials**

Dear Mr. Haas,

I hereby approve the statement of scope submitted on March 23, 2017, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule creating Chapter EL 4 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.135
WISCONSIN ELECTIONS COMMISSION**

Rule No.: EL Ch. 4

Relating to: Conduct and Regulation of Election Observers to Monitor Compliance With Election Laws by Local Election Officials

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only): N/A

2. Detailed 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”), related to the conduct and regulation 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, including voting, counting ballots, and canvassing ballots.

3. 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 and 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 that is consistent with the advice currently provided to local election officials, observer groups and individuals. The rule will be modeled on the expired emergency rule that was in place under the former Government Accountability Board, taking into account any statutory changes not accounted for in the original emergency rule.

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 (mainly for enforcement purposes). Additionally, Wis. Stat. § 7.41(5) directs the Commission to promulgate such rules, therefore failure to promulgate such rules would be in direct conflict of this statute.

4. 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 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.” 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).

5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

80 - 100 hours.

6. List with description of all entities that may be affected by the proposed rule:

The proposed rules will affect municipal clerks, other local election officials, communications media persons present at polling places, accessibility advocates, local election inspectors, and all organizations and individuals that wish to observe elections in Wisconsin by maintaining a presence at polling places.

7. Summary and preliminary comparison with any existing or proposed federal regulation that 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.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The anticipated economic impact from the implementation of the proposed rules is minimal to none. The proposed rules will not affect small businesses.

Contact person: Nathan W. Judnic
nathan.judnic@wi.gov – 608-267-0953



Michael Haas
Administrator
Wisconsin Elections Commission

March 23, 2017
Date Submitted

WISCONSIN ELECTIONS COMMISSION

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



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BEVERLY R. GILL
JULIE M. GLANCEY
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ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL 3.60 – Absentee Ballot Information Subscription Service and Fee Schedule

The proposed rule would codify the procedures and fee scheduled used by the public, candidates and political parties to obtain absentee ballot information from the Commission.

The priority assigned to this rule by the Commission staff is “Medium.”

The Statement of Scope for this proposed rule was submitted to the Governor’s Office on March 23, 2017. The Governor’s Office approved the Statement of Scope on May 5, 2017. The Statement of Scope will now be published by the Legislative Reference Bureau in the Administrative Register. The Statement of Scope must be published for at least 10 days before the Commission may act on it. There is no proposed action on this rule at this time. Commission staff will bring this Statement of Scope to the Commission at its June 2017 meeting for review and approval.

The Governor’s approval letter and the Statement of Scope as approved by the Governor’s office are attached to this memorandum.



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 5, 2017

Michael Haas
Commission Administrator
Wisconsin Elections Commission
212 E Washington Ave
Madison, WI 53703

**RE: Scope Statement for EL 3.60 relating to
absentee ballot information subscription service fee schedule**

Dear Mr. Haas,

I hereby approve the statement of scope submitted on March 23, 2017, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule creating Chapter EL 3.60 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.135
WISCONSIN ELECTIONS COMMISSION**

Rule No.: EL § 3.60

Relating to: Absentee Ballot Information Subscription Service and Fee Schedule

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

2015 Wisconsin Act 261 (“Act 261”) specifically directs the [Government Accountability Board] Elections Commission to establish a subscription service whereby a person may electronically access the absentee ballot information provided under s. 6.33 (5) (a), Stats, including semiweekly updates of such information. Act 261 further requires the [Government Accountability Board] Elections Commission to establish by rule the fee schedule for obtaining access to the absentee ballot information subscription service. The proposed rule will establish the absentee ballot information subscription service and fee schedule as directed by Act 261. The proposed rule will outline the absentee ballot information subscription service parameters, including the process for obtaining semiweekly updates of information. The proposed rule will set the fee schedule for obtaining access to the absentee ballot information subscription service which includes semiweekly updates to the information.

3. 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 already has an online portal (BadgerVoters) that is used by the public to request and receive voter registration. Individuals are able to request quotes, make online payments and retrieve files automatically using this system. Current Wis. Admin. Code EL 3.50 sets the fees associated for voter registration data. The Commission currently uses this system to fulfill requests for absentee data which is populated by registered voters. Under the current rules, requestors of an electronic file (including absentee ballot information) are charged a \$25.00 base fee per file, plus \$5.00 for the first 1,000 records, or up to 1,000 records, plus \$5.00 for each additional 1,000 records. The maximum charge for an electronic file is \$12,500. The charge for a paper copy of a report is \$.25 per page, plus the

cost of postage and shipping. Additionally, if there are ‘custom report’ requests, as defined in the existing rule, additional charges could apply to cover staff time to facilitate the requested customization of the report. The current system also allows individuals to request semiweekly updates of absentee information, and they are charged accordingly for “new” absentee data that is obtained.

Proposed Policy:

The proposed rule will establish the absentee ballot information subscription service. The Commission’s existing BadgerVoters infrastructure will continue to be used to facilitate and respond to requests for absentee voter information. The system will continue to have the ability to provide standard absentee ballot information reports as well as custom reports depending on the requestor’s needs. The system will be designed to continue accommodating semiweekly updates to the requestor. The proposed rule would establish a fee structure similar to the current fee schedule for voter registration data requests, with a base fee for any report, and escalating incremental ‘per record’ fees for larger requests. The base fee would be a one-time charge for the report, with additional charges only required for any requested updates to the data contained on the original report. Custom reports would generate additional fees on a case by case basis depending on the complexity of the request, and the amount of staff intervention required to fulfill the request. A separate fee for printing a paper copy of a request and shipping the request would also likely be included in the proposed rule.

Alternatives:

The alternative to using the existing data request infrastructure (Badger Voters) already in place to meet the Legislature’s directive, would be to develop a stand-alone subscription service for absentee ballot information requests. Additional costs to develop a new system outside of the existing infrastructure would need to be addressed. Additionally, Wis. Stat. §§ 5.05(14)(b) and 6.36(6) directs the Commission to establish a subscription service and fee structure for obtaining absentee data, therefore failure to promulgate such rules would be in direct conflict of these statutes.

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

Wis. Stat. § 6.36(6) directs the Commission to “establish by rule the fee for obtaining a copy of the official registration list, or a portion of the list, including access to the subscription service established under s. 5.05 (14)(b).” Wis. Stat. § 5.05 (14)(b) directs the Commission to “establish a subscription service whereby a person may electronically access the absentee ballot information provided under s. 6.33(5)(a), including semiweekly updates of such information.”

Wis. Stat. § 5.05 (1) states that the 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.” 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).

5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

50 hours.

6. List with description of all entities that may be affected by the proposed rule:

Candidates, political parties, other political groups and the general public will be able to obtain absentee ballot information from a centralized location for a set cost on a semiweekly basis if requested. Absentee voters that have received a ballot from their clerk but have not returned it may be contacted by groups tracking information that is obtained through the subscription service.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The Elections Commission is unaware of any existing or proposed federal regulation directed at a subscription service or fee schedule for absentee ballot information.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The Elections Commission anticipates the rule having minimal or no economic impact, which includes no significant impact on small businesses.

Contact person: Nathan W. Judnic
nathan.judnic@wi.gov (608) 267-0953

Michael Haas

Michael Haas

Administrator
Wisconsin Elections Commission

March 23, 2017
Date Submitted

WISCONSIN ELECTIONS COMMISSION

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



COMMISSIONERS

BEVERLY R. GILL
JULIE M. GLANCEY
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JODI JENSEN
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MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL Ch. 13 – Training for Election Inspectors and Special Voting Deputies

This proposed rule would codify the topic areas that municipal clerks train their election inspectors and special voting deputies on after their appointment to those positions and throughout their tenure as an official.

The priority assigned to this rule by the Commission staff is “Medium.”

The Statement of Scope for this proposed rule was submitted to the Governor’s Office on April 3, 2017. The Governor’s Office approved the Statement of Scope on May 5, 2017. The Statement of Scope will now be published by the Legislative Reference Bureau in the Administrative Register. The Statement of Scope must be published for at least 10 days before the Commission may act on it. There is no proposed action on this rule at this time. Commission staff will bring this Statement of Scope to the Commission at its June 2017 meeting for review and approval.

The Governor’s approval letter and the Statement of Scope as approved by the Governor’s office are attached to this memorandum.



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 5, 2017

Michael Haas
Commission Administrator
Wisconsin Elections Commission
212 E Washington Ave
Madison, WI 53703

**RE: Scope Statement for EL 13 relating to
training for election inspectors and special voting deputies**

Dear Mr. Haas,

I hereby approve the statement of scope submitted on April 3, 2017, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule creating Chapter EL 13 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.135
WISCONSIN ELECTIONS COMMISSION**

Rule No.: EL Ch. 13

Relating to: Training for Election Inspectors and Special Voting Deputies

Rule Type: Permanent

1. **Finding/nature of emergency (Emergency Rule only):** N/A
2. **Detailed description of the objective of the proposed rule:**

Wis. Stat. § 7.315(1)(a) provides that the Wisconsin Elections Commission (“Commission”) shall promulgate administrative rules that prescribe the contents of training that municipal clerks must provide to election inspectors and special voting deputies. Wis. Stat. § 7.315(4) states that election registration officials shall receive the same training that election inspectors receive from their municipal clerk. The Commission currently publishes comprehensive manuals that municipal clerks use to train their election inspectors, election registration officials and special voting deputies. The Commission proposes to enact EL Ch. 13, which will a) codify information already provided to municipal clerks in the manuals, and b) afford the Legislature the opportunity to review the contents of the training that municipal clerks provide their election inspectors, election registration officials and special voting deputies.

3. **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 prescribes the contents of training that municipal clerks must provide to election inspectors, election registration officials and special voting deputies by publishing comprehensive manuals on election administration, election day activities and absentee voting in residential care facilities and retirement homes. The current Elections Administration manual published by the Commission can be accessed here: <http://elections.wi.gov/clerks/education-training/election-administration-manual>. The current Election Day Manual published by the Commission can be accessed here: <http://elections.wi.gov/clerks/education-training/election-day-manual>. The current Absentee Voting in Residential Care Facilities and Retirement Homes manual published by the Commission can be accessed here: <http://elections.wi.gov/publications/manuals/nursing-home-absentee>

Proposed policy:

Similar to current Wis. Admn. Code Ch. EL 12 (training contents for municipal clerks), the Commission seeks to codify the basic contents of the manuals used by municipal clerks to train their election inspectors, election registration officials and special voting deputies.

Alternatives:

If the Commission does not promulgate rules as provided in Wis. Stat. § 7.315(1)(a), the Commission will not be compliant with that statute, but will continue publishing comprehensive manuals that are used by municipal clerks to train election inspectors, election registration officials and special voting deputies.

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

Wis. Stat. § 7.315(1)(a) provides that the “commission shall, by rule, prescribe the contents of the training that municipal clerks must provide to inspectors, other than chief inspectors, and to special voting deputies appointed under s. 6.875. Wis. Stat. §7.315(4) states that “election registration officials shall receive the training as provided under this section for inspectors, other than chief inspectors” therefore the content of the training materials as set forth in the rule will apply equally to election inspectors, election registration officials and special voting deputies.

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).

5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

50 hours.

6. List with description of all entities that may be affected by the proposed rule:

The rules will affect municipal clerks, election inspectors, election registration officials and special voting deputies, but only to the extent that the procedures already guiding training of these officials will now be codified in this rule in addition to being available in the comprehensive manuals drafted by the Commission.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The Help America Vote Act (“HAVA”) provides that States shall use funds provided under HAVA to perform various federal election-related functions, including training election officials, poll workers, and election volunteers. 42 U.S.C. §§ 15301(b)(1)(D), 15421(b)(2). HAVA also provides that State plans for administering federal elections must include information about how the “State will provide for programs for voter education, election official education and training,

and poll worker training which will assist the State” in administering uniform and nondiscriminatory elections. 42 U.S.C. § 15404(a)(3). Finally, HAVA also provides funds to states to “support training in the use of voting systems and technologies[.]” 42 U.S.C. § 15461(c)(1)-(2).

The proposed rules are consistent with these federal provisions, and such rule would help the Commission further effectuate these federal requirements as well as the state statutory requirements under Wis. Stat. § 7.315.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The anticipated economic impact from the implementation of the proposed order is minimal to none. There will likely be little impact, economic or otherwise, on current processes already in place to train local election officials. There is no anticipated economic impact on small businesses.

Contact person: Nathan W. Judnic
(608) 267-0953, Nathan.judnic@wisconsin.gov



Michael Haas
Administrator
Wisconsin Elections Commission

April 3, 2017
Date Submitted

WISCONSIN ELECTIONS COMMISSION

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



COMMISSIONERS

BEVERLY R. GILL
JULIE M. GLANCEY
ANN S. JACOBS
JODI JENSEN
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MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL 6.06 – Curbside Voting Procedures

This proposed rule would codify the Commission staff procedures already in place for allowing an individual to ‘curbside vote’ at the polls as allowed by Wis. Stat. § 6.82.

The priority assigned to this rule by the Commission staff is “Low.”

The Statement of Scope for this proposed rule was submitted to the Governor’s Office on March 23, 2017. The Governor’s Office approved the Statement of Scope on May 5, 2017. The Statement of Scope will now be published by the Legislative Reference Bureau in the Administrative Register. The Statement of Scope must be published for at least 10 days before the Commission may act on it. There is no proposed action on this rule at this time. Commission staff will bring this Statement of Scope to the Commission at its June 2017 meeting for review and approval.

The Governor’s approval letter and the Statement of Scope as approved by the Governor’s office are attached to this memorandum.



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 5, 2017

Michael Haas
Commission Administrator
Wisconsin Elections Commission
212 E Washington Ave
Madison, WI 53703

**RE: Scope Statement for EL 6.06 relating to
procedures for curbside voting**

Dear Mr. Haas,

I hereby approve the statement of scope submitted on March 23, 2017, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule creating Chapter EL 6.06 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor

STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.135
WISCONSIN ELECTIONS COMMISSION

Rule No.: EL §6.06: Curbside Voting

Relating to: Procedures for Curbside Voting

Rule Type: Permanent

- 1. Finding/nature of emergency (Emergency Rule only):** N/A
- 2. Detailed description of the objective of the proposed rule:**

The Wisconsin Elections Commission (“Commission”) proposes to create Wis. Admin. Code EL § 6.06 to provide specific procedures for clerks and electors to engage in curbside voting. The former Government Accountability Board adopted policies and procedures consistent with Wis. Stat. § 6.82(1) for clerks to follow when providing curbside voting opportunities to persons with a disability that are unable to appear and vote inside a polling location. The Commission has continued advising the same procedures when asked by local election officials. The proposed rules codify the Commission’s current curbside voting policies and procedures. Codifying the current policy will enhance enforceability of the procedures and afford the Legislature the opportunity to review the Commission’s procedures.

- 3. 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: Any elector who, as a result of a disability, is unable to enter the polling place may elect to receive a ballot at the entrance of a polling place. Wis. Stat. § 6.82(1). The elector may receive assistance in marking the ballot, if required, from an election inspector or from any other person of the voter’s choice, with certain restrictions. Wis. Stat. § 6.82(2). Consistent with these statutes, the former Government Accountability Board adopted specific procedures for clerks to follow when administering the curbside voting statutes. The Commission continues to advise using the previous policies and procedures. The previous procedures had been distributed to local election officials and are posted on the Commission’s website.

Proposed policy: The Commission proposes to codify the existing policy into the Administrative Code.

Alternatives: If the Commission does not promulgate the rule, the current policy and procedures would remain in effect. The Legislature would not have the opportunity to review the Commission’s policy and the Commission’s authority to enforce the policy would be much more limited.

- 4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

The 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 ensuring their proper administration.” Wis. Stat. §5.05 (1)(f). The Commission has “the responsibility for the administration of chs. 5 to 12, other laws relating to elections and election campaigns, subch. III of ch. 13, and subch. III of ch. 19.” Wis. Stat. §5.05 (1). Under ch. 227, the Commission “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[.]” Wis. Stat. § 227.11 (2)(a). Consistent with the above authority, the proposed rule interprets Wis. Stat. § 6.82(1) and codifies the Commission’s current curbside voting procedures.

5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

80 - 100 hours.

6. List with description of all entities that may be affected by the proposed rule:

Municipal clerks who administer elections and register persons to vote will be affected by the proposed rule, as these persons must implement the proposed rules related to curbside voting. Municipal clerks will also be required to train election inspectors on the new rules, it is anticipated that the rule will be consistent with current policies and procedures, therefore the learning curve will be small. Election inspectors, including the chief inspector will need to be trained on the new rules so they are properly implemented and enforced. Persons with disabilities who wish to vote via the curbside voting procedure will be affected by the proposed rules. Individuals that choose to observe the public aspects of the voting process could be affected by the new rules as well.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The curbside voting statute, Wis. Stat. §6.82(1), is consistent with the Americans with Disabilities Act (“ADA”), which generally requires that polling places be accessible to persons with disabilities. The ADA does not address curbside voting, but is consistent with its purpose which is ensuring access to individuals that have a disability. The Wisconsin statute provides another mechanism for clerks and voters to use to ensure that no person with a disability is prevented from voting due to an inaccessible polling place, but there does not appear to be any comparable federal regulation that specifically addresses curbside voting.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The anticipated economic impact from the implementation of the proposed order is minimal to none. The implementation of the proposed rule will not have a significant impact on small businesses.

Contact person: Nathan Judnic
(608) 267-0953, nathan.judnic@wisconsin.gov



Michael Haas
Administrator
Wisconsin Elections Commission

March 23, 2017
Date Submitted

WISCONSIN ELECTIONS COMMISSION

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

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL Ch. 6 – Procedure

This proposed rule would remove sections of the current rule that are no longer applicable to the Elections Commission and update applicable sections to allow individuals to file certain documents electronically via email.

The priority assigned to the rule by the Commission staff is “High.”

EL Ch. 6 is a chapter that transferred to both the Elections Commission and the Ethics Commission when the Government Accountability Board ended. This chapter contains provisions that are now only applicable to the Ethics Commission (campaign finance). Additionally, this chapter has not kept up with technology and needs to be updated to reflect current electronic filing of documents with the Commission other than by FAX.

Previously the Commission staff proposed a separate rulemaking to address the filing of documents by email with the Commission (March 2017 Commission Meeting Memo – Administrative Rules Update, #11 – filing documents by electronic means). After reviewing the Statement of Scope the Commission staff believes the rulemaking to amend current EL Ch. 6 would allow for these updates as well. Therefore, the rule as drafted removes provisions no longer applicable to the Elections Commission and provides the process for filing of documents via email. Consolidating these two topics reduces the number of separate rulemaking proceedings that Commission needs to pursue. There is no specific action required by the Commission on this point, but the Commission staff wanted to outline why the total number of rules the Commission is now looking at promulgating has decreased.

The Commission approved the Statement of Scope for this rule at the August 30, 2016 meeting. The staff drafted the proposed rulemaking order which contains the Commission staff's analysis and text of the proposed rule. This order was submitted to the Legislative Reference Bureau for a pre-submission edit check for format. The attached order incorporates the edits suggested by the Legislative Reference Bureau. The attached fiscal estimate is to be submitted with the order. Also attached, is the proposed notice that must be sent to the Legislative Reference Bureau and the Secretary of the Department of Administration and published in the Register. The notice informs the public that the proposed rule has been submitted to the Legislative Council Rules Clearinghouse. Per Wis. Stat. § 227.14 (4m), the Commission must approve of the notice prior to its submission. Attached please find the proposed rulemaking order and notice for the Commission to consider and approve.

Recommended Motion: The Wisconsin Elections Commission approves the attached "Proposed Rulemaking Order" and "Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse" for EL Ch. 6, and directs the Commission staff to submit the required notice and other required documents to the Legislative Reference Bureau, the Secretary of the Department of Administration and the Legislative Council Rules Clearinghouse to continue the promulgation of this rule.

PROPOSED ORDER ADOPTING RULE
Wisconsin Elections Commission

The Wisconsin Elections Commission proposes an order to repeal EL 6.03, 6.04(2) (Note), and EL 6.05; to amend EL 6.02(1), EL 6.02(2), EL 6.04 (title), EL 6.04(2), EL 6.04(3), EL 6.04(4), EL 6.04(5) and EL 6.04(6); to create 6.04(1)(ag) and 6.04(1)(ar), relating to procedure.

FINDING OF EMERGENCY:

The Wisconsin Elections Commission proposes to repeal and amend portions of EL Ch. 6. EL Ch. 6 transferred to the Commission effective June 30, 2016 when the election responsibilities of the Government Accountability Board were transferred to the Commission. Portions of this rule are no longer applicable to the Commission as they address duties that are now within the statutory purview of the Wisconsin Ethics Commission. A permanent rule, promulgated parallel to the emergency rule to make the necessary changes, using this same Statement of Scope, will be pursued by the Commission.

ANALYSIS PREPARED BY WISCONSIN ELECTIONS COMMISSION:

1. **Statutes interpreted:** ss. 5.05(1), 5.05(2m)(c)2.a., 5.06(1), 8.10(5), 8.10(6), 8.15(5)(a), 8.15(8), 8.20(6), 8.20(8)(a), 8.21, 9.01, 9.10, Stats.
2. **Statutory authority:** ss. 5.05(1)(f), 227.11(2)(a), Stats.; 2015 Wisconsin Act 118, Section 266 (6).
3. **Explanation of agency authority:** 2015 Wisconsin Act 118, Section 266 (6) directed all current rules of the Government Accountability Board to transfer to the Elections Commission or the Ethics Commission and shall be effective on the date of the transfer, and remain in effect until the Commissions amend or repeal the rules. As a successor agency to the Government Accountability Board, the Elections Commission has the responsibility for the administration of election laws and other law relating to elections and election campaigns, other than laws relating to campaign financing. s. 5.05 (1), Stats. 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.” s. 5.05(1)(f), Stats. The Elections Commission “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[.]” s. 227.11 (2) (a), Stats.

4. **Related statute(s) or rule(s):** Wisconsin Statutes s. 5.05(1)(f) provides the Commission the authority to implement rules which outline the procedures and standards the Commission uses when accepting complaint filings from the public under Wisconsin Statutes Ch. 5. Wisconsin Statutes s. 5.05(1)(f) provides the Commission the authority to implement rules which outline the procedures and standards the Commission uses when accepting ballot access filings and other election related filings from candidates and the public under Wisconsin Statutes Chs. 8 and 9.
5. **Plain language analysis:** This rule amends and repeals sections of EL Ch. 6 which no longer apply to the Wisconsin Elections Commission after the transition from the Government Accountability Board. This rule also amends sections of EL Ch. 6 to update the procedures and standards for filing documents electronically with the Commission.
6. **Summary of, and comparison with, existing or proposed federal regulations:** The Commission is unaware of any existing or proposed federal regulation that is applicable to this proposed rule.
7. **Comparison with rules in adjacent states:**

Iowa: The filing of certain election related documents can be accomplished by facsimile or email, if original documents are received by prescribed deadlines. Certain filings, including verified complaints must be submitted in hard copy with the appropriate filing officer.

Minnesota: Filing officers may accept only original hard-copy election petitions and recall petitions offered for filing, which is consistent with the amendments to the Wisconsin rules.

Illinois: The filing of complaints and filing of other documents with the Illinois State Board of Elections is accomplished by hard copy filing. The Illinois administrative code definition of filing does not include an option for filing documents by email or other electronic means.

Michigan: Consistent with the amendments to Wisconsin rules, certain election related document can only be filed in hard-copy like affidavits of candidacy and petitions.
8. **Summary of factual data and analytical methodologies:** Adoption of this rule was not predicated on any factual data or analytical methodologies. As part of the transition from the Government Accountability Board to the Wisconsin Elections Commission, the plan called for transferring GAB Ch. 6 in its entirety to the Wisconsin Elections Commission and rename it EL Ch. 6. Upon transfer, portions of the rule that no longer applied to the Wisconsin Elections Commission were to be removed.

9. **Analysis and supporting documentation used to determine effect on small businesses:** The Wisconsin Elections Commission does not anticipate that the changes to EL Ch. 6 will have an impact on small businesses. The proposed changes are limited to Wisconsin Elections Commission staff procedures and how candidates and the general public can comply with those procedures when filing complaints or ballot access documents. These procedures are wholly unrelated to small businesses and will have no impact.
10. **Effect on small business:** The creation of this rule does not affect small business.
11. **Agency contact person:** Nathan W. Judnic, Legal Counsel, Wisconsin Elections Commission, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 267-0953; nathan.judnic@wisconsin.gov
12. **Submission of written comments:** Comments may be submitted by mail or email to the above contact or to the Wisconsin Elections Commission generally, 212 E. Washington Ave., 3rd Floor, P.O. Box 2973, Madison, WI 53701-2973; or sent by email to elections@wi.gov. Comments may also be submitted to the Wisconsin Elections Commission using the Wisconsin Administrative Rules website at: <http://adminrules.wisconsin.gov>.
- Comments on this rule will be accepted until close of business on June 19, 2017.
13. **Public hearing:** The proposed rule will be published under the 30-day notice procedure in s. 227.16 (2) (e). The proposed rule will be adopted without public hearing, unless a petition is received by the agency, within 30 days after publication of the notice, signed by one of the following:
- (a) Twenty-five natural persons who will be affected by the rule.
 - (b) A municipality that will be affected by the rule.
 - (c) An association that is representative of a farm, labor, business or professional group that will be affected by the rule.

TEXT OF PROPOSED RULE:

SECTION 1. EL 6.02 is amended to read:

EL 6.02 Registration statement sufficiency. (1) Any registration filed with a filing officer under ~~ss. 11.0501, 11.0502, and 11.0503~~ chs. 8, 9, and 11, Stats., which is insufficient as to essential form, information or attestations shall be rejected by such officer and shall be promptly returned if possible to the proposed registrant indicating the nature of the insufficiency. ~~The proposed registrant shall be informed that the attempted~~

~~registration is not effective. The filing officer shall inform the proposed registrant that the attempted registration is not effective.~~

(2) Any registration statement filed with a filing officer under ~~ss. 11.0501, 11.0502, and 11.0503~~ chs. 8, 9, and 11, Stats., which is insufficient or incomplete in some manner but substantially complies with law shall be accepted by such officer who shall then promptly notify the registrant indicating the nature of the incompleteness or insufficiency. The registrant shall then have 15 days from the date of such notice to rectify the problem. If the incompleteness or insufficiency is not rectified by the registrant within 15 days from the date of the notice, the registration lapses and is not effective. The filing officer shall inform the registrant that the registration has lapsed and is not effective.

SECTION 2. EL 6.03 is repealed.

SECTION 3. EL 6.04 (title) is amended to read:

EL 6.04 Filing documents by facsimile (FAX) or email process.

SECTION 4. EL 6.04 (1) (ag) and (ar) are created to read:

EL 6.04 (1) (ag) “Email” has the same meaning as email process.

(ar) “Email process” means the electronic transmission of a duplicate copy of a signed original document.

SECTION 5. EL 6.04 (2) is amended to read:

EL 6.04 (2) Nomination papers, recall petitions, and ~~those campaign finance reports provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, 11.0904, and 11.1001 Stats.,~~ other election related petitions may not be filed with the filing officer by facsimile process or email process. Nomination papers, ~~and~~ recall petitions, and other election related petitions shall not be considered filed with the filing officer until the signed original of each nomination paper, ~~and each recall petition, or other election related petition~~ is received in the offices of the filing officer. ~~Campaign finance reports which are provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, 11.0904, and 11.1001, Stats., and which are delivered by the U.S. mails are considered filed with the filing officer when the report is postmarked. Campaign finance reports which are provided in ss. 11.0103, 11.0204, 11.0304, 11.0404, 11.0504, 11.0604, 11.0704, 11.0804, 11.0904, and 11.1001, Stats., and which are not delivered by the U.S. mails, are considered filed with the filing officer when received in the filing officer's offices.~~

SECTION 6. EL 6.04 (2) (Note) is repealed.

SECTION 7. EL 6.04 (3) (a), (4), (5), and (6) are amended to read:

EL 6.04 (3) (a) A duplicate copy of the document is received by the filing officer, in its offices, by facsimile process or by email process, no later than the day and hour at which the document is required to be filed and

(4) Any document which is filed by facsimile process or by email process under this rule shall be considered received at the time of transmission as recorded and entered by the receiving equipment by the filing officer's staff when the facsimile copy or email copy is delivered to the filing officer's offices.

(5) If, for any reason, transmission of a document is not received at the filing officer's offices, whether because of a failure in the receiving system of the filing officer or because of a failure in the transmitting system of the person attempting to file or for any other reason, a document shall not be considered received or filed until a facsimile copy or email copy is delivered to and received at the filing officer's offices and the signed original is received at the filing officer's offices with a postmark not later than the filing deadline.

(6) The burden of establishing that a document has been received by facsimile process or by email process at the offices of the filing officer shall be upon the person who, or the committee or group which, is required to file the document.

SECTION 8. EL 6.05 is repealed.

SECTION 9. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22, Stats.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

X Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

EL Chapter 6, Procedure

3. Subject

Rule repeals and amends sections of EL Ch. 6 which no longer apply to the Wisconsin Elections Commission after the transition from the Government Accountability Board. The rule is amended to update procedures for the filing of documents electronically by email with the Wisconsin Elections Commission.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

X No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes X No

9. Policy Problem Addressed by the Rule

Removes portions of this rule that no longer apply to the Wisconsin Elections Commission. Updates rule to allow individuals to file certain documents electronically by email to keep up with modern technology and practices.

10. 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.

None

11. Identify the local governmental units that participated in the development of this EIA.

None

12. 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)

None

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Removes parts of the rule that no longer apply to the Wisconsin Elections Commission. Allows certain documents to be filed electronically by email with the Wisconsin Elections Commission. Failure to remove provisions no longer applicable to the Wisconsin Elections Commission could confuse voters, candidates, elected officials and the general public.

14. Long Range Implications of Implementing the Rule

Removes parts of a rule that no longer apply to the Wisconsin Elections Commission, and therefore will remove potential confusion by those affected by the rule. Allows certain documents to be filed electronically by email with the Wisconsin Elections Commission.

15. Compare With Approaches Being Used by Federal Government

None

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

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

Iowa: The filing of certain election related documents can be accomplished by facsimile or email, if original documents are received by prescribed deadlines. Certain filings, including verified complaints must be submitted in hard copy with the appropriate filing officer.

Minnesota: Filing officers may accept only original hard-copy election petitions and recall petitions offered for filing, which is consistent with the amendments to the Wisconsin rules.

Illinois: The filing of complaints and filing of other documents with the Illinois State Board of Elections is accomplished by hard copy filing. The Illinois administrative code definition of filing does not include an option for filing documents by email or other electronic means.

Michigan: Consistent with the amendments to Wisconsin rules, certain election related document can only be filed in hard-copy like affidavits of candidacy and petitions.

17. Contact Name Nathan W. Judnic	18. Contact Phone Number 608-267-0953
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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)

N/A

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:
-

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

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On May 25, 2017, 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 affects Chapter EL 6, relating to Elections Commission staff procedures. A related emergency rule, affecting the same Administrative Code provisions contained in this proposed rule relating to the same purpose has not been published and therefore is not in effect.

Statement of Scope

The scope statement for this rule, SS 073-16, was approved by the Governor on August 5, 2016, published in Register No. 728A3, published on August 15, 2016, and approved by the Wisconsin Elections Commission on August 30, 2016.

Agency Procedure for Promulgation

Pursuant to s. 227.16 (2), Stats., a public hearing is not required. The proposed rule will be promulgated without public hearing unless a petition is received by the agency within 30 days after publication of the notice, signed by any of the following:

1. Twenty-five natural persons who will be affected by the proposed rule.
2. A municipality that will be affected by the proposed rule.
3. An association which is representative of a farm, labor, business, or professional group that will be affected by the proposed rule.

Agency Organization Unit Primarily Responsible for Promulgating Rule

Wisconsin Elections Commission
212 E. Washington Ave., 3rd Floor
P.O. Box 7984
Madison, WI 53701-7984

Agency Contact Person

Nathan W. Judnic
Legal Counsel
608-267-0953
nathan.judnic@wisconsin.gov

WISCONSIN ELECTIONS COMMISSION

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



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ANN S. JACOBS
JODI JENSEN
STEVE KING
MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL Ch. 21 – Practice and Procedure

This proposed rulemaking will repeal EL Ch. 21 in its entirety. This rule deals with written advice provided by the Commission.

The priority assigned to the rule by the Commission staff is “High.”

EL Ch. 21 is a chapter that transferred to both the Elections Commission and the Ethics Commission when the Government Accountability Board (G.A.B.) ended. This chapter originated with the State Ethics Board (predecessor to the G.A.B.) and contains provisions related to requests for written advice. This rule was used extensively by the State Ethics Board but rarely, if ever, used by the Government Accountability Board even though it was part of the G.A.B.’s chapters. Wis. Stat. § 5.05(6a) generally sets forth the procedure for someone to ask the Commission for written advice in the form of an informal or formal advisory opinion.

The Commission staff believes EL Ch. 21 is obsolete and the procedures contained in Wis. Stat. § 5.05(6a) are controlling when dealing with requests for written advice from the Commission. Therefore the Commission staff believes EL Ch. 21 should be repealed in its entirety.

The Commission approved the Statement of Scope for this rule on August 30, 2016 which authorized the staff to remove or amend portions of the rule so that it was applicable only to the Elections Commission. This rule is very short, and the Commission staff does not believe it is needed given the statutory procedures that cover this topic area. Therefore the attached proposed rulemaking order and text of the rule repeals EL Ch. 21 in its entirety. This rulemaking order was submitted to the Legislative Reference Bureau for (LRB) a pre-submission edit check for format. The LRB approved the rulemaking order as drafted. Also attached, is the proposed notice that must be sent to the

Legislative Reference Bureau and the Secretary of the Department of Administration and published in the Register. The notice informs the public that the proposed rule has been submitted to the Legislative Council Rules Clearinghouse. Per Wis. Stat. § 227.14 (4m), the Commission must approve of the notice prior to its submission. Attached please find the proposed rulemaking order and notice for the Commission to consider and approve.

Recommended Motion: The Wisconsin Elections Commission approves the attached “Proposed Rulemaking Order” and “Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse” for EL Ch. 21, and directs the Commission staff to submit the required notice and other required documents to the Legislative Reference Bureau, the Secretary of the Department of Administration and the Legislative Council Rules Clearinghouse to continue the repeal of this rule.

PROPOSED ORDER ADOPTING RULE
Wisconsin Elections Commission

The Wisconsin Elections Commission proposes an order to repeal EL Ch. 21.

FINDING OF EMERGENCY:

The Wisconsin Elections Commission proposes to repeal EL Ch. 21. EL Ch. 21 transferred to the Commission effective June 30, 2016 when the election responsibilities of the Government Accountability Board were transferred to the Commission. The procedures outlined in the rule are superseded by Wis. Stat. § 5.05(6a). A permanent repeal of this rule will be pursued by the Commission using the same Statement of Scope.

ANALYSIS PREPARED BY WISCONSIN ELECTIONS COMMISSION:

1. **Statutes interpreted:** ss. 5.05(6a), Stats.
2. **Statutory authority:** ss. 5.05(1)(f), 227.11(2)(a), Stats.
3. **Explanation of agency authority:** The Elections Commission has the responsibility for the administration of election laws and other law relating to elections and election campaigns, other than laws relating to campaign financing. s. 5.05 (1), Stats. 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.” s. 5.05(1)(f), Stats. The Elections Commission “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[.]” s. 227.11 (2) (a), Stats.
4. **Related statute(s) or rule(s):** Wisconsin Statutes s. 5.05(6a) outlines the process for the Commission and the Commission Administrator to provide formal and informal advisory opinions on subject matter covered by chs. 5 to 10 or 12, Stats.
5. **Plain language analysis:** Current EL Ch. 21 was originally a State Ethics Board rule that transferred to the Government Accountability Board and was then split out and placed in both the Ethics Commission and Ethics Commission’s chapters on June 30, 2016. The Elections Commission rarely issues formal or informal advisory opinions on its subject matter, but if it did, it would follow the procedures set forth in Wis. Stat. § 5.05(6a). There is nothing in current EL Ch. 21 that is relevant to the process set forth in Wis. Stat. § 5.05(6a). Therefore EL Ch. 21 should be repealed.

6. **Summary of, and comparison with, existing or proposed federal regulations:** Not applicable, repealing rule in entirety.
7. **Comparison with rules in adjacent states:** Not applicable, repealing current rule in entirety.
8. **Summary of factual data and analytical methodologies:** Adoption of this rule was not predicated on any factual data or analytical methodologies. As part of the transition from the Government Accountability Board to the Wisconsin Elections Commission, the plan called for transferring GAB Ch. 21 in its entirety to the Wisconsin Elections Commission and rename it EL Ch. 21. Upon transfer, portions of the rule that no longer applied to the Wisconsin Elections Commission were to be removed. EL Ch. 21 should be repealed in its entirety.
9. **Analysis and supporting documentation used to determine effect on small businesses:** There will be no impact on small business.
10. **Effect on small business:** The creation of this rule does not affect small business.
11. **Agency contact person:** Nathan W. Judnic, Legal Counsel, Wisconsin Elections Commission, 212 E. Washington Avenue, 3rd Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 267-0953; nathan.judnic@wisconsin.gov
12. **Submission of written comments:** Comments may be submitted by mail or email to the above contact or to the Wisconsin Elections Commission generally, 212 E. Washington Ave., 3rd Floor, P.O. Box 2973, Madison, WI 53701-2973; or sent by email to elections@wi.gov. Comments may also be submitted to the Wisconsin Elections Commission using the Wisconsin Administrative Rules website at: <http://adminrules.wisconsin.gov>.

Comments on this rule will be accepted until close of business on June 19, 2017.

TEXT OF PROPOSED RULE:

SECTION 1. EL Ch. 21 is repealed.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22, Stats.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
X Original Updated Corrected

2. Administrative Rule Chapter, Title and Number
EL Chapter 21, Practice and Procedure

3. Subject
The Wisconsin Elections Commission seeks to repeal EL Ch. 21 in its entirety.

4. 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	5. Chapter 20, Stats. Appropriations Affected
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6. Fiscal Effect of Implementing the Rule
X No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)
 State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?
 Yes X No

9. Policy Problem Addressed by the Rule
The rule relates to the issuance of advisory opinions which is covered by Wis. Stat. § 5.05(6a). The rule is no longer necessary and should be repealed.

10. 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.
None

11. Identify the local governmental units that participated in the development of this EIA.
None

12. 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)
None

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
Eliminate potential conflict in procedure between the rule and the statutes regarding the issuance of advisory opinions.

14. Long Range Implications of Implementing the Rule
Eliminate potential conflict in procedure between the rule and the statutes regarding the issuance of advisory opinions.

15. Compare With Approaches Being Used by Federal Government
N/A - repeal

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
N/A - repeal

17. Contact Name Nathan W. Judnic	18. Contact Phone Number 608-267-0953
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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)

N/A

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:
-

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

Notice of Submittal of Proposed Rule to Legislative Council Rules Clearinghouse

On May 25, 2017, 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 affects Chapter EL 21, relating to Elections Commission practice and procedure. A related emergency rule, affecting the same Administrative Code provisions contained in this proposed rule relating to the same purpose has not been published and therefore is not in effect.

Statement of Scope

The scope statement for this rule, SS 072-16, was approved by the Governor on August 5, 2016, published in Register No. 728A3, published on August 15, 2016, and approved by the Wisconsin Elections Commission on August 30, 2016.

Agency Procedure for Promulgation

Pursuant to s. 227.16 (2), Stats., a public hearing is not required. The proposed rule will be promulgated without public hearing unless a petition is received by the agency within 30 days after publication of the notice, signed by any of the following:

1. Twenty-five natural persons who will be affected by the proposed rule.
2. A municipality that will be affected by the proposed rule.
3. An association which is representative of a farm, labor, business, or professional group that will be affected by the proposed rule.

Agency Organization Unit Primarily Responsible for Promulgating Rule

Wisconsin Elections Commission
212 E. Washington Ave., 3rd Floor
P.O. Box 7984
Madison, WI 53701-7984

Agency Contact Person

Nathan W. Judnic
Legal Counsel
608-267-0953
nathan.judnic@wisconsin.gov

WISCONSIN ELECTIONS COMMISSION

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



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BEVERLY R. GILL
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JODI JENSEN
STEVE KING
MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL Chs. 5 and 7 – Ballot and Electronic Voting Equipment Security and Approval of Electronic Voting Equipment

The proposed rule would outline the rules for ballot and electronic voting equipment security and the state approval process for voting equipment.

The priority assigned to this rule by the Commission staff is “High.”

The Commission staff has previously recommended two separate rulemakings for EL Ch. 5 and EL Ch. 7. While the Commission staff was aware of some crossover between the two topics, after additional review of these chapters it became more apparent that combining these two chapters into one chapter makes the most sense. The promulgation stage for both of these chapters is in the earliest stages – with EL Ch. 5 needing to be redrafted as an “EL” rule instead of a “G.A.B.” rule and resubmitted for approval, and the scope statement for Ch. 7 being approved in 2015 as a G.A.B. rule, also needing to be resubmitted as an “EL” rule.

The staff seeks permission to draft a Statement of Scope which will combine the parameters for ballot and electronic voting equipment security (previously set forth in G.A.B. Ch. 5) and update current EL Ch. 7 to reflect current technology and the parameters for the approval of electronic voting equipment. Consolidating these two topics reduces the number of separate rulemaking proceedings that Commission needs to pursue and houses these important topics within the same chapter. Previous statements of scope have been drafted for G.A.B. versions of these rules; therefore the drafting of a new statement of scope which combines these two rules should be relatively straightforward and can be forwarded to the Governor’s Office quickly if the Commission approves this approach.

Recommended Motion: The Commission directs staff to draft a Statement of Scope for EL Chapter 7 on Ballot and Electronic Voting Equipment Security and the Approval of Electronic Voting Equipment and submit the Statement of Scope to the Governor's Office for approval.

WISCONSIN ELECTIONS COMMISSION

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



COMMISSIONERS

BEVERLY R. GILL
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JODI JENSEN
STEVE KING
MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL Ch. 12 – Certification and Training of Municipal Clerks

The proposed rule will outline the responsibilities of clerks in maintaining records in the statewide voter registration system.

The priority assigned to this rule by the Commission staff is “Medium.”

The Commission staff believes current EL Ch. 12 related to certification and training of municipal clerks could be amended to clarify the responsibilities of local election officials in maintaining records in the Statewide Voter Registration System, including list maintenance procedures. The former G.A.B. staff and the current Commission staff already provide detailed guidance and instructions to local election officials on maintaining records in WisVote. The administrative rule in this area would formalize the guidance provided and give the Legislature an opportunity to review the high level procedures that would be set out in the rules. Promulgation of the rule would also be consistent with the recommendation to do so made by the Legislative Audit Bureau in report 14-14.

The Commission staff recommends amending this chapter to formalize procedures that local election officials use to maintain voter records in WisVote. Attached to this memorandum is current EL Chapter 12 – Certification and Training of Municipal Clerks.

Recommended Motion: The Commission directs staff to draft a Statement of Scope to amend EL Ch. 12 to formalize procedures for local election officials to maintain voter records in WisVote, and submit the Statement of Scope to the Governor’s Office for approval.

Chapter EL 12

CERTIFICATION AND TRAINING OF MUNICIPAL CLERKS

EL 12.01	Definitions.
EL 12.02	Certification.
EL 12.03	Initial certification and renewal of certification.

EL 12.04	Training content.
EL 12.05	Certification waiver.

Note: Chapter GAB 12 was renumbered Chapter EL 12 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

EL 12.01 Definitions. In this chapter:

- (1) “Commission” means the elections commission.
- (2) “Election cycle” begins on January 1 of an odd-numbered year and continues through December 31 of the following even-numbered year.
- (3) “Municipal clerk” includes the executive director and deputy director of the Milwaukee City Board of Election Commissioners.
- (4) “Municipal election official” means municipal clerk, deputy clerk or any municipal employee charged with duties related to the administration of elections.
- (5) “Statewide Voter Registration System” is the election administration software application provided by the commission to enable local election officials to register voters, track absentee voting, and administer elections.

History: CR 08–024: cr. Register November 2008 No. 635, eff. 12–1–08; correction in (1), (5) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 12.02 Certification. (1) Only municipal clerks who meet the training standards established in this chapter shall be certified by the commission.

- (2) Any other municipal election official who meets the standards established in this chapter may be certified by the commission.
- (3) The standards for the initial and the renewal certifications of municipal clerks are those set forth in this chapter.
- (4) The commission shall maintain a record of the municipal clerks who meet the training standards established by this chapter.
- (5) To establish completion of certification requirements, a municipal clerk shall provide the commission with documentation of attendance at any approved training that has not been conducted by commission staff.
- (6) The records concerning the training qualifications of municipal clerks are public records and shall be provided by the commission upon request.
- (7) The governing body of any municipality whose municipal clerk fails to meet the training standards set out in this chapter shall be notified of that fact by the commission.

History: CR 08–024: cr. Register November 2008 No. 635, eff. 12–1–08; correction in (1), (2), (4) to (7) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 12.03 Initial certification and renewal of certification. (1) To qualify for initial certification, individuals shall attend or view a core curriculum training course conducted under the direction of the commission staff. The expiration date for initial certification shall coincide with the end of the election cycle during which the initial certification was obtained.

(2) After attending the initial training and obtaining certification, individuals seeking to maintain their training certification for the succeeding election cycle must attend, during the current election cycle, an additional 3 hours of training approved by the administrator of the commission. Attendance at the core curriculum class plus attendance at three additional hours of approved

training (for a total of 6 hours of training during the initial term) will certify the attendee through the end of the succeeding election cycle. Any further renewal of certification will require attendance at 6 hours of additional approved training in the then-current cycle. Those 6 hours of training will apply to the following cycle.

- (3) The commission shall conduct training opportunities in several locations throughout the state, and shall make training opportunities available on-line, and in video or audio format, to enable interested individuals to renew their certification.
- (4) Each municipal clerk who attends a training course conducted under the direction of the commission’s staff shall register with the commission. Individuals may not carry over training hours to qualify for renewal of their certification in subsequent election cycles.
- (5) The approved training may consist of attendance at any combination of the following training opportunities if that training opportunity covers all or part of the training content described in this chapter:
 - (a) A certification-training course for municipal clerks or chief election inspectors conducted under the direction of the commission staff.
 - (b) Training on the use of the Statewide Voter Registration System presented under the direction of the commission staff, including on-line training developed for the commission and made available to local election officials.
 - (c) A workshop conducted by the commission staff at a state or district meeting of the Wisconsin County Clerks Association, Wisconsin Municipal Clerks Association, Wisconsin Towns Association or League of Wisconsin Municipalities.
 - (d) An information presentation conducted by the commission staff and sponsored by the University of Wisconsin Extension Local Government Center.
 - (e) Training conducted by a municipal or county clerk for election inspectors, pursuant to ss. 7.10 (9), 7.15 (1) (e) and (11), Stats.
 - (f) Attendance at a state, regional or national conference, or a seminar of a professional organization, that serves election officials.

(6) The commission shall maintain a record of the approved training event, including the date and location of the approved training.

(7) When the individual has completed the renewal requirements, the individual’s certification shall be extended for the duration of the next election cycle.

History: CR 08–024: cr. Register November 2008 No. 635, eff. 12–1–08; correction in (1) to (4), (5) (a) to (d), (6) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 12.04 Training content. (1) The content of the training curriculum shall be prescribed by the commission.

(2) The training curriculum shall include the following elements:

(a) A core curriculum session that provides an overview of the election-related duties of a municipal clerk.

(b) Instructions on the proper completion of election-related forms and notices, including a requirement that the information on election-related forms be legible.

(c) Review of the applicable statutory deadlines for publishing notices, submitting petitions and ballot access documents.

(d) Directions for the review and completion of election-related forms and petitions, including affixing the signature and certification required by law.

(e) Treatment of confidential voter information and proof of residence documents received from a voter.

(f) Review of the deadlines and procedures for delivering completed election-related documents to the board of canvassers.

(g) A description of the calendar of election events and critical election-related timelines.

(h) Duties of the municipal clerk with respect to candidates for municipal office.

(i) Requirements for ballot design and preparation, including write-in ballots for military and overseas electors.

(j) Duties of the municipal clerk with respect to voters, including absentee, military, overseas and confidential electors, and accessibility to the electoral process.

(k) Requirements for recruitment, appointment and training of election inspectors, special voting deputies, special registration deputies, and other election officials.

(L) Requirements for acquisition, testing, security and audit of voting equipment.

(m) Procedures for ensuring security of ballots and voting equipment, including chain of custody documentation, use of seri-

alized, tamper-evident seals, and monitoring of security procedures.

(n) Requirements for establishing, equipping, supplying, securing, and preparing polling places for elections, including emergency preparedness.

(o) Election-day responsibilities of the municipal clerk.

(p) Post-election responsibilities of the municipal clerk, including conducting the municipal canvass, issuing certificates of election and conducting a recount.

(q) Requirements for recall and direct legislation.

(r) The consequences for failing to follow prescribed procedures.

(s) Any other information prescribed by the commission.

History: CR 08-024: cr. Register November 2008 No. 635, eff. 12-1-08; correction in (1) (intro.), (s) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 12.05 Certification waiver. (1) In the event of an emergency, the municipal clerk may make a written request to the commission for a waiver of the training requirement for a municipal clerk.

(2) The request shall be communicated to the administrator of the commission in an expeditious manner.

(3) The request shall describe the facts that establish the basis for the emergency request and the steps that have been taken by the municipal clerk to obtain the required training.

(4) The administrator of the commission may grant a waiver of the required training for one election cycle.

History: CR 08-024: cr. Register November 2008 No. 635, eff. 12-1-08; corrections made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

WISCONSIN ELECTIONS COMMISSION

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



COMMISSIONERS

BEVERLY R. GILL
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ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL Ch. 20 – Complaint Procedure

The proposed rule would amend current complaint procedures contained in EL Ch. 20.

The priority assigned to this rule by the Commission staff is “Medium.”

Current EL Ch. 20 related to complaint procedures has been superseded by Wis. Stat. § 5.05(2m), except for complaints filed with the Commission under Wis. Stat. § 5.06 against local election officials. The Commission staff recommends amending this chapter to more specifically address the procedures used when a complaint is filed under Wis. Stat. § 5.06, including the sometimes short deadlines required to resolve ballot access issues. Attached to this memorandum is current EL Chapter 20 – Complaint Procedure.

Recommended Motion: The Commission directs staff to draft a Statement of Scope to amend EL Ch. 20 to provide the procedures for complaints filed under Wis. Stat. § 5.06, and submit the Statement of Scope to the Governor’s Office for approval.

Chapter EL 20 COMPLAINT PROCEDURE

EL 20.02 Definitions.
EL 20.03 Filing.
EL 20.04 Investigations.
EL 20.05 commission meetings.
EL 20.06 Hearings.

EL 20.07 Withdrawal and settlement.
EL 20.08 Diligent action; dismissals.
EL 20.09 Temporary orders.
EL 20.10 Service.

Note: Chapter EL 20 has been superseded by s. 5.05 (2m), Wis. Stat., and is no longer effective, except for complaints alleging a violation of election laws by a local election official under s. 5.06, Wis. Stat.

Note: Chapter EIBd 10 was renumbered chapter GAB 20 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 2., 6. and 12., Stats., Register April 2008 No. 628. Chapter GAB 20 was renumbered Chapter EL 20 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

EL 20.02 Definitions. As used in this chapter:

(1g) “Administrator” means a person duly appointed by the board or any employee of the agency to whom a lawful function has been delegated by the administrator to administer and manage the agency.

(1r) “Commission” means the elections commission.

(2) “Complainant” means an elector, a committee or a group filing a matter with the commission under this chapter.

(4) “Probable cause” means the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true.

(5) “Respondent” means a person, committee, or a group whose decisions or actions may be brought before the commission on complaint for review under this chapter.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; renum. (1), (2) to (1r), (1g) under s. 13.92 (4) (b) 1., Stats., and correction in (1g), (1r), (2), (5) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.03 Filing. (1) All complaints, answers and replies shall be in writing and shall be sworn to before a person authorized to administer oaths.

(2) The form of the complaint, answer or reply should, but is not required to, follow the format prescribed herein:

State of Wisconsin Before the Elections Commission

The Complaint of _____,
Complainant
against _____,
Respondent ¹

COMPLAINT

This complaint is under _____ (Insert the applicable section(s) of law in chs. 5 to 10 and 12, Stats., if known) ²

I (Insert the complainant’s name), allege that (Set forth in detail the facts that establish probable cause to believe that a violation occurred. Use as many separate pages as needed.)

Date: _____ (complainant’s signature)

I (complainant’s name), being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

_____ (complainant’s signature)

STATE OF WISCONSIN)
) ss.
County of _____),
(county of notarization)

Sworn to before me this _____ day of _____, 2_____

(Signature of person authorized to administer oaths)

My commission expires _____, or is permanent
Notary Public or (official title if not notary)

¹ Substitute complaint, answer or reply, as the case may be, and make the appropriate changes throughout the document.

² A statutory basis is not required for an answer or reply.

(3) The complaint shall specify the statutory basis for the complaint and shall set forth the facts which are alleged to establish probable cause. Information which may establish probable cause includes allegations that set forth which persons are involved; what those persons are alleged to have done; where the activity is believed to have occurred; when the activity is alleged to have occurred and who are the witnesses to the events. The

complaint shall be signed by the complainant or by an individual acting as the complainant's representative.

(4) The complaint shall state the name and last known post office address of the complainant and the respondent.

(5) The complainant, not the complainant's representative, shall verify the allegations of the complaint. The complainant verifies the complaint by signing a statement under oath before a notary public or other person authorized to administer oaths. The verification statement, or a statement to the same effect, shall state as follows:

"I, (complainant's name), being first duly sworn upon oath, state that I personally read the above complaint and that the above allegations are true and correct based on my personal knowledge and, as to those allegations stated on information and belief, I believe them to be true."

The verification shall be placed at the bottom of the complaint.

(6) The complainant shall mail to, or personally serve on, the respondent a copy of the complaint no later than the time of filing the complaint with the commission and shall certify to that service on the complaint or in a cover letter filed with the complaint. Each party shall mail to, or personally serve on, each other party any subsequent pleading before filing the pleading with the commission and shall certify to the service on the pleading or in a cover letter filed with the pleading.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (6) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.04 Investigations. (1) Any matter brought to the commission shall be reviewed by the administrator who shall determine within 10 business days whether the complaint is timely, is sufficient as to form and states probable cause.

(2) If the complaint does not meet the standards under sub. (1), the administrator shall promptly return the complaint to the complainant, without prejudice unless otherwise provided by law, specifying both the defect in the complaint and the information appropriate to cure the defect. A copy of the administrator's letter to the complainant shall be provided to the respondent.

(3) If the complaint meets the standards under sub. (1) as applied to complaints under s. 5.05, Stats., the administrator shall promptly forward the complaint to the respondent at the respondent's last known post office address. The respondent shall file with the commission a verified, written answer within 10 business days. After receiving the answer, the administrator shall promptly forward the answer to the complainant at the complainant's last known post office address. The complainant may file a written, verified reply to the answer within 10 business days.

(4) After receiving an answer that makes any counterclaim against the complainant, the administrator shall promptly forward the counterclaim to the complainant. The complainant shall file a written, verified answer to the counterclaim within 10 business days. After receiving the complainant's answer, the administrator shall promptly forward the answer to the respondent for a written, verified reply to be filed within 10 business days.

(5) The administrator has the discretion to extend by not more than an additional 10 business days, the time for the complainant or respondent to file any responsive pleading. A business day is any day that the agency is open for business.

(6) If the complaint meets the standards under sub. (1), as applied to complaints under s. 5.06, Stats., the administrator shall proceed as the commission authorizes by duly adopted motion and, where no motion is in effect, the administrator shall proceed after consultation with the commission's chair.

(7) A party that fails to obtain an extension of time to respond pursuant to sub. (2), or who fails to respond within 10 business days to a pleading mailed to the party's last known post office address that is not returned to the commission, may be deemed to have admitted each allegation contained in the pleading, and to

have accepted any other consequences for failing to respond to a pleading.

(8) The time period for filing an answer or reply begins 3 business days after the date of the transmittal letter from the administrator. An answer or reply will be treated as filed based on the postmark of the envelope transmitting the pleading.

(9) After all pleadings are filed under s. 5.05, Stats., the administrator shall analyze the pleadings, present them, with appropriate recommendations, to the commission at its next regularly scheduled meeting, or at the most immediate meeting thereafter at which the matter can be heard if the matter cannot be heard at the next regularly scheduled meeting, and forward a copy of the analysis and recommendations to the complainant and respondent within a reasonable time before the commission meeting at which the matter will be considered.

(10) After all pleadings are filed under s. 5.06, Stats., the administrator shall proceed as the commission authorizes by duly adopted motion or, where no motion is in effect, the administrator shall proceed after consultation with the commission's chair. Where the commission has delegated to the administrator the authority to resolve complaints, the administrator shall issue an order making findings and resolving the complaint.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; corrections in (3) and (9) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628; correction in (1) to (10) made under s. 13.92 (4) (b) 6., Stats., and correction in (3), (6), (9), (10) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

EL 20.05 commission meetings. (1) The commission shall review the analysis and recommendations of its administrator with respect to pleadings filed under s. 5.05, Stats., at its next regularly scheduled meeting.

(2) Any party may submit a written statement of facts approved by the administrator for consideration by the commission.

(3) Personal appearances, limited to 10 minutes per party plus additional time to respond to questions from commission members and staff, are permitted at each meeting of the commission. A complainant shall make the first presentation and the respondent shall make the second presentation. No rebuttal or extension of time will be allowed unless specifically provided by the commission.

(4) Parties may provide a written argument or brief in support of their positions. Such arguments or briefs are limited to 5 pages, single spaced on one side of a sheet of paper. Parties submitting written material to the commission must submit 12 copies to the administrator no later than 3 business days before the commission meeting at which the matter will be considered.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register April 2008 No. 628; corrections in (1) to (4) made under s. 13.92 (4) (b) 6., Stats., and correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

EL 20.06 Hearings. (1) Before issuing a final decision or order on the merits of a complaint filed with the commission under this chapter, the commission or its administrator shall conduct an evidentiary hearing, under ch. 227, Stats., if either of the following occurs:

(a) In the commission's judgement, a hearing is necessary in the interest of justice and a material question of fact exists.

(b) A hearing is expressly required by statute.

(2) Before issuing a final decision or order on the merits of a complaint filed with the commission under this chapter, the commission or its administrator may conduct an evidentiary hearing, under ch. 227, Stats., when:

(a) The commission concludes that facts exist which have not been presented and which may tend to resolve the dispute.

(b) The commission, in its discretion, determines that an evidentiary hearing is appropriate.

(3) Except in the case of an emergency, the commission shall provide the parties with at least 10 days written notice of a hearing

stating the date, the time, and the place of the hearing, the nature of the case, and a general statement of the issues to be heard. The parties may, with the consent of the commission, waive the right to notice. Continuances or postponements may be granted by the administrator only in the case of exceptional circumstances entirely beyond the control of the party requesting the continuance or postponement and only upon notice to the administrator given at least 3 days before the hearing.

(4) The commission, or the administrator, or a hearing examiner proceeding under ch. 227, Stats., may preside over the hearing. The commission may, by duly adopted motion of the commission or by an order issued before taking any testimony, direct that the administrator's or the hearing examiner's decision be final as to the merits of the matter. Subject to the provisions of this chapter, the administrator or hearing examiner shall have the powers specified in s. 227.46 (1), Stats.

(5) Based upon the law applicable to the type of proceeding the commission is required to conduct, the parties appearing at the hearing shall be afforded reasonable opportunity to be represented by counsel, to call witnesses, to present evidence, and to confront and cross examine adverse witnesses. The statutory and common law rules of evidence shall not be binding as to issues of admissibility. The administrator or hearing examiner may admit all testimony having reasonable probative value, but shall exclude irrelevant, immaterial or unduly repetitious testimony. No material finding of fact shall be made unless supported by competent evidence in the record.

(6) All testimony at the hearing shall be given under oath and shall be recorded by a stenographer or a recording machine, but need not be transcribed unless a party requests a transcript and pays any costs required to prepare a transcript.

(7) All decisions following a hearing shall be in writing and shall set forth, in relevant detail, the findings of fact and conclusions of law. A decision shall be served on the parties by mailing a copy to each party's last known post office address.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction in (1) (intro.), (2) to (5) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.07 Withdrawal and settlement. (1) At any time before the issuance of a final decision, a complainant may file with the commission a written request to withdraw his or her complaint, specifying the reasons for the request. Upon receiving such a request, the commission may, but is not required to, issue an order dismissing the matter with or without prejudice. If the commission decides not to dismiss the case, the commission may take

any appropriate action, within its authority, that the commission determines will serve the public interest.

(2) The parties to proceedings under this chapter may not settle disputed matters by compromise and conciliation without the consent of the commission, except where the settlement is authorized by law. Upon receiving written notice that settlement has been proposed, the commission may, at its next regularly scheduled meeting, consider the proposal as the commission deems appropriate.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; corrections made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.08 Diligent action; dismissals. (1) The commission shall proceed promptly and diligently to decide cases under this chapter.

(2) If a party fails to appear at a hearing, the commission, the administrator, or the hearing examiner may proceed with the hearing, provided that due notice of the hearing was mailed to the party's last known post office address.

(3) A party may request the commission to reconsider its decision if a request for reconsideration is received by the commission within 30 days after the party receives written notice of the commission's decision by filing a written request with supporting information showing that an obvious mistake of fact or law which materially affects the outcome of the decision has occurred; or showing newly discovered evidence that was not obtainable with due diligence during the course of the hearing.

(4) A party may request that commission consideration of a matter be postponed. The request shall be in writing and shall be served on the administrator and all other parties at least 3 business days before the date scheduled for commission consideration of the matter.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; corrections made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.09 Temporary orders. The commission may issue a protective order or grant such protective relief as the commission determines is necessary to preserve the rights of any party to a matter subject to this chapter before issuing a final decision or order.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 20.10 Service. The administrator may accept service of any pleading on behalf of the commission including civil actions commenced against the commission.

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; correction made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

WISCONSIN ELECTIONS COMMISSION

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



COMMISSIONERS

BEVERLY R. GILL
JULIE M. GLANCEY
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ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: EL 3.10, 3.11, 3.12, 3.13, 3.20 – Removal of References to Special Registration Deputies

These proposed changes to these rules would remove references to special registration deputies.

The priority assigned to amending these rules by the Commission staff is “Low.”

Wis. Stat. § 6.26, which was the statutory section that authorized the use of special registration deputies, was repealed in January 2017. Sections of EL Ch. 3 are based on Wis. Stat. § 6.26 and outline procedures used by special registration deputies to register voters as well processes for applying to be a special registration deputy and required training.

The elimination of special registration deputies is one of the issues currently on appeal in the *One Wisconsin* litigation before the 7th Circuit Court of Appeals. Until this litigation is resolved, the Commission staff recommends making no changes to the current rules. The Code Editor has removed all active cross-reference links to Wis. Stat. § 6.26 in the online version of the rule and has included a note following the applicable sections of the rules which states that these sections are unenforceable and will be repealed in a future rulemaking. Given the amount of effort required to repeal a rule, only to have the rule reinstated if the court rules in favor of the plaintiffs on that issue, the Commission staff recommends placing any action on this rule on hold until the litigation is resolved.

Recommended Motion: The Commission directs the staff to take no action on amending EL 3.10, 3.11, 3.12 or 3.20 until the *One Wisconsin* litigation has been resolved.

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



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BEVERLY R. GILL
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ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Nathan W. Judnic
Legal Counsel

SUBJECT: Legislation in Lieu of Administrative Rulemaking

As identified in the memo presented at the March 14, 2017 Commission meeting, there are five proposed rules which the Commission staff have identified as good candidates for the Legislature to pass as legislation rather than promulgating an agency administrative rule. Commission staff provided these five proposed rules to the legislative staff for the Assembly Committee on Campaigns and Elections to start the discussion of whether a bill to address the topics contained in those proposed rules is possible. Subsequent conversations with the legislative staff and the chair of the Assembly Committee on Campaigns and Elections have been positive, and the Commission staff believes there is a high probability that a bill or bills will be introduced, therefore the Commission staff believes pursuing administrative rules on these topics should be placed on hold as we finalize discussions with legislative staff on these topics.

The five proposed rules that the Commission staff believes are good candidates for legislation are as follows:

- 1) **Election Notices:** Wis. Stat. § 10.01(1) directs the Commission to prescribe the form of the various election notices contained in that chapter to ensure they are uniform. “To accomplish this purpose, the commission shall make rules and draft whatever forms it considers necessary.” Wis. Stat. § 10.01(1). The forms are already prescribed and posted on the Commission’s website for use by local election officials. The statutes already prescribe the contents of the notices.
- 2) **Electronic Proof of Residence:** Based on current Commission policy (former policy of the G.A.B.) a voter wishing to register to vote may present either an acceptable hard-copy document or an electronic version of an acceptable document that establishes proof of residency. Many proof of residence documents are no longer sent or received by an individual in hard-copy. A statutory

change to clarify that the proof of residence document can be presented in hard-copy form, or an electronic version on a device like a cell phone or tablet (bank statement, paycheck, check or other document issued by a government unit) makes common sense given current business practices and technological advances. If the Legislature agrees with continuing this policy decision it can easily be codified in the statutes. If not, promulgating an administrative rule to that effect would likely be blocked at the final stage of legislative review after a significant amount of work was dedicated to the process.

- 3) **Absentee Voting Procedure for Overseas Voting:** Legislation to cover a very rare absentee voting scenario could be added to the overseas voter statutes. The former G.A.B. allowed an overseas voter to have a U.S. citizen witness their absentee voting process via an internet video service, such as Skype or Facetime, when they were unable to locate a U.S. citizen to have the process witnessed in-person. There have been many discussions regarding the need for a witness signature for overseas absentee voters and the need for that witness to be a U.S. citizen. It is possible that legislation may already be in the works to address either or both of these issues. If the witness requirement remains, allowing some flexibility to use modern technology to facilitate the requirement makes common sense even if it would be rarely used.
- 4) **Requiring Provision of Certain Information by Election-Day Registration Applicants:** Current Wis. Admn. Code § 3.04(2) allows for a provisional ballot to be issued to a voter that is unable or unwilling to provide their DOT issued driver license or DOT issued state ID card number on the registration application. The rule allows the individual issued a provisional ballot under this category to provide the number to the clerk no later than 4:00 p.m. on the day after the election. Individuals issued a provisional ballot in all other statutory categories must provide the required piece of information to the clerk by 4:00 p.m. by the Friday after the election. Legislation to clarify this category of provisional ballot scenario and changing the due date to the Friday after the election would standardize provisional ballot procedures which can be troublesome for clerks. Once legislation standardizes the information across the board, a simple repeal of this provision would be in order. A note indicating that the provision has been superseded by statute would be inserted until formal repeal was accomplished.
- 5) **Definition of “Same Grounds”:** The phrase “same grounds” is used in Wis. Stat. § 6.875(3)(b), related to absentee voting in retirement homes and adult care facilities, and no corresponding definition is provided to inform clerks as to what this phrase could encompass. “If a retirement home that is not a qualified retirement home is located within a municipality on the *same grounds* as one or more residential care facilities to which the municipal clerk or board of election commissioners of the municipality dispatches special voting deputies to conduct voting at an election, the municipal clerk or board of election commissioners shall obtain from the management of the retirement home the names and addresses of the occupants of the home.” Wis. Stat. § 6.875(3)(b). The Commission staff believes the proper place to define this statutory phrase is within Wis. Stat. Ch. 6, not in an administrative rule.

No formal action is sought from the Commission by the staff, however if Commission members believe a different approach should be taken, this would be the appropriate time to discuss alternatives before draft legislation addressing these issues is drafted and introduced.

WISCONSIN ELECTIONS COMMISSION

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



COMMISSIONERS

BEVERLY R. GILL
JULIE M. GLANCEY
ANN S. JACOBS
JODI JENSEN
STEVE KING
MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Meagan McCord Wolfe
Assistant Administrator

SUBJECT: Requests for Approval of IT Related Contract

The following purchasing request is submitted for the Commission's consideration and approval:

Approval to Enter into Contract

WEC staff is requesting Commission approval to enter into one, three-year contract for an IT contractor position that is currently scheduled to expire June 30, 2017. The annual cost of the contract will not exceed \$180,000 and the Commission's delegation of contract authority requires pre-approval from the Commission for procurement contracts exceeding \$100,000.

For the past five years, Agency IT application development positions have been filled by IT contractors who are dedicated to Agency IT applications. These contractors have made significant contributions to agency IT applications including: development and maintenance of the WisVote system, MyVote, Badger Voters, Canvas Reporting, Wisconsin Election Data Collection System, and other supporting applications.

Funding will be secured for this contracted position through federal grants, General Purpose Revenue, and revenue generated through the Badger Voters data reporting service. Contracted IT positions can be terminated by the agency at any point throughout the contract as needed, although at minimum this position will likely be necessary throughout FY18-19 to maintain and enhance Agency IT applications.

Staff requests approval to enter into the three year contract for an IT contracted position classified as a Systems Architect-1. Funding rates and IT classifications are established through the State of Wisconsin purchasing and procurement processes.

Recommended Motion: Approve the execution of one, three year IT contract for the Systems Architect-1 position, not to exceed \$180,000 annually.

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ADMINISTRATOR MICHAEL HAAS

MEMORANDUM

DATE: For the May 23, 2017 Commission Meeting

TO: Members, Wisconsin Elections Commission

FROM: Michael Haas
Interim Administrator

Prepared and Presented by:
Meagan McCord Wolfe
Assistant Administrator

SUBJECT: Requests for Approval of IT Related Contracts – Continued Appropriateness Finding

Pursuant to the revised delegation of authority approved by the Commission at its meeting of October 14, 2016, the following purchasing request is submitted for the Commission's consideration and approval to ensure continuation of Agency IT work FY 18.

FY 18 Approval for Contracted Information Technology (IT) Services

At the beginning of each fiscal year, Commission staff is required by the Department of Administration's (DOA) State IT contracting processes to authorize the continuation of IT work through a process called Continued Appropriateness. This process is required for annual expenditures of services over \$50,000. WEC staff is requesting Commission approval to authorize the continuation of two IT contractors for FY 18 per the Commission's delegation of contract authority which requires pre-approval from the Commission for purchases from a statewide contract over \$100,000. All IT contractor rates of pay are determined by the position classification established by the DOA rate card.

The WEC's IT efforts are funded primarily through federal funds granted through the Help America Vote Act (2002) and Federal Voting Assistance Program EASE grant. For the two Election Division IT contractors, staff anticipates expending no more than \$400,000 during FY 18.

Contracted IT staff provides critical services to the Agency that ensures all IT applications are maintained and functional. Contract IT staff also makes continuous enhancements and necessary modification to support legislative changes, court directives, and platform upgrades. It is imperative to authorize the continuation of IT work in order to complete development of major IT projects (MyVote Wisconsin, WisVote phase II, E-Poll Books, Canvass Reporting System, Badger Voters, and CRM

application integration) in accordance with state statutes and election cycle deadlines. Failure to continue the IT contracts would, to a large degree, bring the agency's services to a halt.

Recommended Motion: Authorize the continuation of IT contracts in FY 18 for the WEC's three IT contract positions.