

WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR
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COMMISSIONERS

BEVERLY R. GILL
JULIE M. GLANCEY
ANN S. JACOBS
JODI JENSEN
VACANCY

MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

Report From Agency

September 6, 2017

Mr. Patrick Fuller
Assembly Chief Clerk
Atth: Kay Inabnet
17 West Main St., Room 401
Madison, WI 53703

Mr. Jeff Renk
Senate Chief Clerk
Attn: Jeff Beighley
Room B20 Southeast
State Capitol
Madison, WI 53703

Hand Delivered Via Clearinghouse Rule Jacket and Via Email

Re: **Notice of Administrative Rule in Final Form
Clearinghouse Rule 17-042
EL Chapter 21, relating to Practice and Procedure**

Dear Mr. Fuller and Mr. Renk:

Please note that EL Chapter 21 (Clearinghouse Rule 17-042), relating to Practice and Procedure is in final draft form and is being submitted to your offices in accordance with the requirements of Wis. Stat. § 227.19 (2) and (3) for referral to the appropriate committees. The appropriate notice of this submission will be made to the Legislative Reference Bureau and the Administrative Rules Clearinghouse.

Enclosed please find, in triplicate, the Notice and Report of the Wisconsin Elections Commission with the required attachments for this rule.

If you have any questions, please feel free to contact me at (608) 267-0953 or nathan.judnic@wi.gov.

Regards,

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Nathan W. Judnic'.

Nathan W. Judnic, Legal Counsel

Enclosures

REPORT OF THE WISCONSIN ELECTIONS COMMISSION

CLEARINGHOUSE RULE 17-042

WIS. ADM. CODE EL CH. 21

The Wisconsin Elections Commission proposes an order to repeal ch. EL 21, relating to practice and procedure. This report is filed with the following information and attached documents pursuant to Wis. Stat. § 227.19 (3).

A. Proposed rule. The proposed rule in final form as approved by the Governor's Office pursuant to Wis. Stat. § 227.185 is attached to this report.

B. Rule summary.

ANALYSIS PREPARED BY WISCONSIN ELECTIONS COMMISSION:

1. **Statutes interpreted:** s. 5.06(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:** The 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. 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:** 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 7984, Madison, WI 53701-7984; 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 were accepted until close of business on June 19, 2017. The Commission received no comments on this rule.
13. **Public hearing:** The proposed rule was 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.

The Commission received no petitions related to this rule and therefore no public hearing was conducted.

- C. Reference to applicable forms.** None.
- D. The fiscal estimate.** The fiscal estimate and economic impact analysis for this rule is attached to this report.
- E. Any statement, suggested changes, or other material submitted to the agency by the SBRRB.** None.
- F. Economic impact analysis.** The fiscal estimate and economic impact analysis for this rule is attached to this report.
- G. Any revised economic impact analysis prepared by the agency.** None.
- H. Any report prepared by DOA for a proposed rule with \$20,000,000 or more in implementation and compliance costs.** None.
- I. Energy impact report.** None.
- J. Rules Clearinghouse Report.** The Rules Clearinghouse Report for this rule is attached to this report.
- K. Detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.**

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 Elections 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.

- L. Summary of public comments to the proposed rule and the agency's response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at a public hearing.** No public comments were received on this rule. No public hearing was conducted for this rule pursuant to the 30-day notice procedure in s. 227.16 (2) (e).
- M. List of the persons who appeared or registered for or against the proposed rule at a public hearing.** None.

- N. Changes to rule summary or fiscal estimate.** None.
- O. Response to Rules Clearinghouse Report.** The Wisconsin Elections Commission accepted the recommendations of the Rules Clearinghouse Report in whole.
- P. For a proposed rule that will have an effect on small businesses, a final regulatory flexibility analysis that contains the information in s. 227.19(3)(e).** None.
- Q. Changes made due any energy impact report submitted.** None.
- R. Report from DOA for rules affecting housing in the state.** None.
- S. Response to any report prepared by SBRRB.** None.

Date submitted: September 6, 2017

ORDER ADOPTING RULE
Wisconsin Elections Commission

The Wisconsin Elections Commission proposes an order to repeal EL Ch. 21, relating to practice and procedure.

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.

13. **Public hearing.** The proposed rule was 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 FINAL DRAFT 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

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
-



WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 17-042

AN ORDER to repeal ch. EL 21, relating to practice and procedure.

Submitted by **ELECTIONS COMMISSION**

06-01-2017 RECEIVED BY LEGISLATIVE COUNCIL.

06-13-2017 REPORT SENT TO AGENCY.

MSK:KBO

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO **X**
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES **X** NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO **X**
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO **X**
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO **X**
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO **X**
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO **X**



WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-042

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

- a. In the introductory clause for the proposed order, a relating clause should be inserted to state the subject matter of the proposed order. [s. 1.02 (1) (a), Manual.]
- b. The statement on the finding of emergency could be removed as the proposed order is for the permanent rule.

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VACANCY

MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

To: Legislative Reference Bureau

From: Wisconsin Elections Commission

NOTICE

This notice is to inform you that a rule in final draft form was submitted to the chief clerks of the State Senate and State Assembly on September 6, 2017.

Clearinghouse Rule 17-042 has been submitted to repeal ch. EL 21 relating to practice and procedure. The submission of the rule in final draft form also includes the legislative report and attachments and the Legislative Council's staff report. The Governor's Office approved this rule in final draft form on August 31, 2017.

Dated September 6, 2017

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Nathan W. Judnic'.

Nathan W. Judnic
Legal Counsel

Cc: Administrative Rules Clearinghouse (Clearing.House@legis.wisconsin.gov)