

**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

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