

**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