

STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.24
WISCONSIN ELECTIONS COMMISSION

Rule No.: Wis. Adm. Code EL Chapter §§ 2.05; 2.07; 2.09; 2.11
Relating to: Ballot Access and Election Petition Challenge Procedure
Rule Type: Permanent Rule pursuant to Wis. Stat. § 227.11(2)

RULE ANALYSIS
Pursuant to § 227.135(1):

a) A description of the objective of the proposed rule.

Ballot access challenges have historically been more prevalent during general election cycles, and there is no reason to believe that 2024 will be an exception. Recent challenge periods have highlighted the need to modernize, more explicitly detail, and more carefully craft administrative rule language pertaining to ballot access so that all candidates and potential challengers, as well as the general public, have a clear understanding of the rules and procedures applicable to ballot access challenges.

b) Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives.

Sections 8.04, 8.10, 8.15, 8.20, and 8.50 of Wisconsin state statutes lay out some basic grounds for nomination paper sufficiency. Rule EL 2.05 addresses the treatment and sufficiency of nomination papers, and rule EL 2.07 lays out the process for challenges to nomination papers. However, the current rule 2.07 includes cross-references to other types of complaint processes that are not relevant or applicable to ballot access. The current rule also includes ambiguous language regarding the grounds for challenges to nomination papers. The proposed administrative rule would amend § 2.07 to remove cross-references to other complaint procedures, and would supplement the existing procedures for challenges to nomination papers. The proposed rule would also clarify ambiguous language throughout § 2.07, and would also update the relevant provisions of §§ 2.05, 2.09, and 2.11 so that they are consistent with the new amended rule § 2.07. Finally, the proposed rule would also incorporate existing Commission guidance and address common issues relating to the sufficiency of nomination papers.

The alternative would be to not promulgate this rule, leaving several issues in place that could complicate the very short timelines available for candidates seeking office and challengers raising concerns.

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

General Authority pursuant to Wis. Stat. § 5.05(1): “General authority. 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 commission may:

- (f) Promulgate 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 laws regulating campaign financing, or ensuring their proper administration.” Specific Authority pursuant to Wis. Stat. § 8.07 – “Validity of nomination papers. The commission shall promulgate rules under this chapter for use by election officials in determining the validity of nomination papers and signatures thereon.”

Agency Rulemaking Authority pursuant to Wis. Stats. § 227.11(2)(a): “Agency rulemaking authority. Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

d) An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

WEC staff estimates that it would take approximately 80 staff hours to draft a scope statement and carry out the subsequent steps to promulgate an administrative rule.

e) A description of all of the entities that may be affected by the proposed rule.

This would affect clerks, election officials, candidates, and individuals challenging the ballot access of candidates, and it is likely to provide the necessary clarity and authority to streamline the ballot access challenge processes. The proposed rule would do so mainly by codifying existing practices and would require minimal compliance outreach and training to clerks because of their familiarity with ballot access challenges as local filing officers. The effect of the proposed rule, and subsequent processes, would have little to no impact on small businesses. The proposed rule should minimize the risk that a candidate is improperly granted, or denied, ballot access by providing clear procedures for how the Commission and local filing officers would hear and decide nomination paper challenges.

f) A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

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