



JOINT COMMITTEE FOR THE REVIEW OF ADMINISTRATIVE RULES

COMMITTEE CO-CHAIRS: SENATOR STEVE NASS AND REPRESENTATIVE JOAN BALLWEG

Emergency Rule 2407 2025 Assembly Bill 13

Report to the Legislature Emergency Rule 2407 The Joint Committee for Review of Administrative Rules Produced pursuant to 227.26 (2) (g), Stats.

Emergency Rule 2407, promulgated by the Wisconsin Elections Commission (WEC), provides directives to clerks requiring the mandatory use of uniform instructions for absentee voting prescribed by WEC.

Description of Problem

The Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing on Emergency Rule 2407, relating to the mandatory use of uniform instructions for absentee voting, on July 22, 2024, at the request of Senator Steve Nass to review concerns that the rule violated legislative intent, failed to meet the statutory threshold of an “emergency” justifying the use of the emergency rule process, and potentially created increased confusion for clerks and voters very close to a Presidential election.

Arguments In Favor of Suspension

- *WEC’s claim of an emergency falls woefully short of the statutory definition for invoking an “emergency” to justify an emergency rule. The Commission had every opportunity to follow the standard permanent rule process, which provides for increased transparency, public input, and legislative review.*
- *Wisconsin has had closely contested and high voter turnout election cycles since at least 2000. WEC provided no evidence of factors relating to the November 2024 election that jeopardized the public peace, health, safety, or welfare that is any different than past elections.*
- *A lack of planning by the Wisconsin Elections Commission does not create an emergency justifying the circumvention of the normal permanent rule process. The Commission, and indeed everyone else, knew the scheduled dates of the 2024 election, and that there would be significant voter turnout. They had every opportunity to use the permanent rule process if they thought additional rules necessary, yet inexplicably waited until a few months before the election to act on a purported emergency basis.*
- *The Commission’s claims of high levels of scrutiny and high voter turnout does not justify rushed procedures. If anything, the Commission should proceed in a methodical and ordinary manner if it is truly worried. When the Commission waits until a few months before an election and then acts on a purported emergency basis, its conduct creates an appearance of impropriety.*

- *If the rule remains in effect, it could create confusion and inconsistency in our election process very near the general and primary elections that damages public confidence in our system.*
- *Legislative Council analysis found drafting issues with the emergency rule relating to form, style, adequacy of references, and identified instances of provisions that lacked clarity. Issues of clarity and the lack of plain language could create serious challenges for voters and clerks in understanding and complying with this emergency rule.*

Arguments Against Suspension

- *No one from the Wisconsin Elections Commission attended the public hearing to explain, defend, or justify their rationale for the emergency rule, despite notice and invitation by JCRAR to them.*
- *In written comments, submitted immediately before the start of the public hearing, one Commissioner argued the rules provided more consistency and predictability, reduced the possibility for surprises, increased fairness in how elections are run, and ensured that a candidate's placement on the ballot could not be threatened by strategies that both major political parties had rejected.*
- *Another citizen argued in written comments that requiring mandatory use of uniform instructions for absentee voting would help ensure that voters with disabilities receive consistent and accurate information and guidance regarding absentee voting.*

Action by Joint Committee for Review of Administrative Rules

On July 22, 2024, the Joint Committee for Review of Administrative Rules held an executive session on Emergency Rule 2407. The committee passed the following motion on a 6-4 vote, temporarily suspending the rule (YES: Nass, Neylon, Stroebel, Bradley, Petersen, Spiros; NO: Roys, Larson, Conley, Baldeh):

Moved, that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26 (2) (d), Stats., suspend an emergency rule of the Wisconsin Elections Commission, relating to mandatory use of uniform instructions for absentee voting (EmR 2407), on the grounds that the rule fails to comply with legislative intent.

On August 20, 2024, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Stroebel, Bradley, Petersen, Spiros; NO: Roys, Larson, Conley, Baldeh) to introduce LRB 6213/1 and LRB 6228/1, which support the suspension of Emergency Rule 2407 by the joint committee. Pursuant to 227.26 (2) (j), the bills were not introduced during the 2023-24 legislative session, and need to be introduced in the next regular session of the legislature.

On January 29, 2025, the Joint Committee for Review of Administrative Rules voted 6-4 (YES: Nass, Neylon, Bradley, Tomczyk, Petersen, Spiros; NO: Roys, Ratcliff, Snodgrass, Arney) to introduce LRB 0682/1 and LRB 0685/1, which support the suspension of Emergency Rule 2407 by the joint committee. The bills were introduced as Senate Bill 46 and Assembly Bill 13 in the 2025-26 legislative session.

Passage of one of these bills in support of the JCRAR suspension would permanently remove the Wisconsin Elections Commission's ability to promulgate Emergency Rule 2407.