

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 06/06/2024								
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) EL ss. 2.06, 2.08, Declaration of Candidacy Challenge Procedure									
4. Subject All candidates for local, state, and federal office in Wisconsin, except presidential electors, are required to file a Declaration of Candidacy with the appropriate filing officer. Wis. Stat. § 8.21(1). The Declaration of Candidacy must be sworn before a notary or other officer authorized to administer oaths. Wis. Stat. § 8.21(2). In the Declaration of Candidacy, each candidate states that he or she either meets, or will at the time he or she assumes office meet, any applicable requirements for holding office. Wis. Stat. § 8.21(2). Section 8.30 is the companion statute to § 8.21. The Commission and local filing officers have statutory authority to refuse to place a candidate's name on the ballot if any of the specified situations in § 8.30(1)(a), (b), or (c) apply, or if the Declaration of Candidacy is not timely filed. Wis. Stat. § 8.30(4). The proposed rule would create a clear administrative process for an individual to challenge any aspect of a candidate's sworn Declaration of Candidacy, but not their nomination papers. The challenge to the Declaration of Candidacy would be brought to the Commission, or to the local filing officer. The proposed rule would identify the legal grounds for bringing these types of challenges by incorporating or cross-referencing the appropriate provisions in § 8.21, § 8.30, or both. The proposed rule would also describe the procedures by which the Commission or filing officer hear and decide these complaints, as well as the ability of an individual to seek review of the Commission's or filing officer's decision on their complaint.									
5. Fund Sources Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis. Stat. s. 20.510								
7. Fiscal Effect of Implementing the Rule <table style="width: 100%;"><tr><td><input checked="" type="checkbox"/> No Fiscal Effect</td><td><input type="checkbox"/> Increase Existing Revenues</td><td><input type="checkbox"/> Increase Costs</td><td><input type="checkbox"/> Decrease Costs</td></tr><tr><td><input type="checkbox"/> Indeterminate</td><td><input type="checkbox"/> Decrease Existing Revenues</td><td colspan="2"><input type="checkbox"/> Could Absorb Within Agency's Budget</td></tr></table>		<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs	<input type="checkbox"/> Decrease Costs	<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget	
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8. The Rule Will Impact the Following (Check All That Apply) <table style="width: 100%;"><tr><td><input type="checkbox"/> State's Economy</td><td><input type="checkbox"/> Specific Businesses/Sectors</td></tr><tr><td><input type="checkbox"/> Local Government Units</td><td><input type="checkbox"/> Public Utility Rate Payers</td></tr><tr><td colspan="2"><input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</td></tr></table>		<input type="checkbox"/> State's Economy	<input type="checkbox"/> Specific Businesses/Sectors	<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	<input type="checkbox"/> Small Businesses (if checked, complete Attachment A)			
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<input type="checkbox"/> Small Businesses (if checked, complete Attachment A)									
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00									
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No									
11. Policy Problem Addressed by the 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 clarify administrative rule language pertaining to ballot access challenges.									
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule defines calendar day to specifically include weekends and legal holidays. The effect of this definition may mean that filing officers, including Wisconsin's 72 county clerks and approximately 1,850 municipal clerks, may need to complete administrative responsibilities on evenings, weekends, or legal holidays. Under the proposed rule, clerks will be required to transmit an electronically filed challenge within 4 hours of the challenge deadline, and physically filed challenges no later than noon the day after the challenge is filed. Filing officers may also be required to									

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complete administrative tasks on weekends, evenings, or legal holidays if the challenge response deadline or rebuttal deadline falls on those days.

Accordingly, there may be some effect on municipal fiscal liabilities and revenue depending on how municipalities handle evening, weekend, and legal holiday work for their employees.

However, this is not a common occurrence. There are three major dates throughout the year when candidates file nomination papers. The first Tuesday in January for the Spring Election in April (§ 8.10(2)(a)), June 1 for the August Partisan Primary (§ 8.15(1)), and the first Tuesday in August for independent presidential candidates (§ 8.20(8)(am)). Occasionally, the first Tuesday in January might be New Year's Day (legal holiday), and occasionally, June 1 might fall on a weekend. Special elections may come up from time to time, but the Governor or municipal governing body, can take steps to avoid the challenge deadlines falling on weekends or holidays when they set the election schedule.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

No local government units participated in the development of this EIA.

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The most significant benefit of implementing the rule is to provide candidates, election officials, and filing officers with clearer, more consistent procedures by which individuals can bring challenges to nomination papers. The current rules are ambiguous and do not clearly provide direction to filing officers and candidates for best practices in receiving and deciding nomination paper challenges. The alternative to implementing the rule would be for the Commission to continue to issue non-binding guidance documents to fill in the procedural gaps in the administrative code, which does not provide certainty for candidates and filing officers.

16. Long Range Implications of Implementing the Rule

The analysis did not identify a significant economic impact or any financial or compliance burdens on small businesses.

17. Compare With Approaches Being Used by Federal Government

There are no existing or proposed federal statutes or regulations intended to address the procedures for bringing and deciding declaration of candidacy paper challenges in Wisconsin.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois law is very similar to the expanded procedures that would be effectuated by the proposed administrative rule. Illinois law requires candidates to file "Statements of Candidacy" and "Nominating Sheets" of signatures. Individuals may file "petition objection cases" to challenge the sufficiency of nominating sheets. Objection petitions must include an original and two copies, and are filed with the State Board of Elections, the election authority, or local election official

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with whom the nomination petition was filed. Once the objection is received, the filing officer transmits it no later than noon on the second business day to the chair of the proper electoral board and to the candidate who filed the nominating sheets. Within 24 hours of the receipt of the objecting petition, the appropriate electoral board notifies the objector and the candidate the day, hour and place at which the electoral board will hear the objection. The appropriate electoral board must meet not less than three nor more than five days after receipt of the objecting petition. At the first day of the meeting, the electoral board adopts rules and procedures for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs by the parties to the objection or by other interested persons. Within five days of the electoral board's decision, the candidate or objector aggrieved may petition for judicial review in the appropriate circuit court. The circuit court will then hear and decide the judicial review petition within 30 days.

Iowa law is very similar to current Wisconsin practices under the existing administrative rules. Iowa law requires candidates to file an "Affidavit of Candidacy" and "Nomination Petitions" with the appropriate filing officer. Nomination papers are inspected for completeness before they are accepted for filing. Iowa law permits challenges, called "objections," to both nomination papers and affidavits of candidacy. Objections must be made in writing, and can be brought by anyone who would have a right to vote for the candidate for office. Objections are filed with the officer with whom the nomination papers are filed. When an objection is filed, notice is mailed within 72 hours to the candidate. Objections filed with the state commissioner are decided by the State Objections Panel, comprised of the Secretary of State, State Auditor, and Attorney General. Objections filed with the commissioner are considered by three county officers. Objections filed with the city clerk are considered by the mayor, clerk, and one city council member. Objections relating to incorrect or incomplete information shall be sustained.

Michigan law has a few different procedures for nomination paper review, but their challenge process is substantively similar to Wisconsin's current practice. Michigan law requires candidates to file "Nomination Petitions" and an "Affidavit of Candidacy." Michigan law permits candidates for its Legislature to pay a filing fee in lieu of filing nomination papers; those candidates cannot be challenged for insufficient signatures. Michigan utilizes a petition sampling procedure to evaluate the validity of ballot signatures. Board of Elections staff utilize a single-step random sampling process using specially designed software. Once generated, the sample list is distributed for challenges. BOE staff review the sample signatures twice for sufficiency, and again if they are challenged. Challenges may be filed up to seven days following the filing deadline. The challenge must specify each signature being challenged and why. To challenge anything other than specific signatures, a full written description of what is being challenged must be submitted. Challenges are filed with the appropriate filing officer. The Board or county clerk is responsible for resolving any challenges and certifying qualified candidates the ballot.

Minnesota ballot access law and procedure are very different from Wisconsin for both the current rules and proposed rules. Minnesota requires candidates to submit an "Affidavit of Candidacy," and most major party candidates choose to pay a filing fee to the appropriate filing officer in lieu filing "Nomination Petitions." For the minority of candidates who do file nomination papers, Minnesota filing officers examine nomination petitions for sufficiency and substantial compliance. There are different verifying procedures for major party and minor party candidates. Instead of an administrative challenge or process, Minnesota allows individuals to file a petition for the correction of errors, omissions, or wrongful acts for ballot access. The petition is filed in court, which then immediately sets a hearing on the matter. The court then issues its findings and a final order.

19. Contact Name Angela O'Brien Sharpe, Staff Attorney	20. Contact Phone Number 608-264-6764
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This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

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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

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

N/A

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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:

N/A

-
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

This rule may be enforced pursuant to an administrative complaint brought under ss. 5.06 or 5.05. This rule may be enforced through an action or proceeding to test the validity of any decision, action or failure to act on the part of any election official with respect to any matter specified in s. 5.06(1) provided that the condition in s. 5.06(2) is also satisfied.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No
