

**STATEMENT OF SCOPE
PURSUANT TO WIS. STAT. § 227.135
WISCONSIN ELECTIONS COMMISSION**

Rule No.: EL Ch. 20 Complaint Procedure

Relating to: Procedures for Complaints Filed Against Local Election Officials Under Wis. Stat. § 5.06

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 amend Wis. Adm. Code Ch. EL 20 (“EL Ch. 20”), relating to complaint procedure. This code chapter is a carryover from rules originally promulgated by the State Elections Board, then transferred to the Government Accountability Board and now to the Commission. Complaints are generally filed with the Commission under two statutory provisions, either Wis. Stat. § 5.05(2m) or Wis. Stat. § 5.06. Complaints filed with the Commission under Wis. Stat. § 5.05(2m) are to allege violations of Wis. Stat. chs. 5 to 10 or 12. While complaints to the Commission are allowed under Wis. Stat. § 5.061, the Commission has never received any such complaints. For complaints filed under Wis. Stat. § 5.05(2m), the statute provides that the Commission shall notify each person that is alleged of committing a violation within 5 days of receipt. Wis. Stat. § 5.05(2m)(c)2.a. Each individual that receives notice from the Commission shall be provided an opportunity to respond to the complaint in writing within 15 days to demonstrate why the Commission should take no action on the complaint. Id. Complaints filed with the Commission under Wis. Stat. § 5.06 allege that a local election official has not complied with applicable election laws in making a decision or taking an action, or the official abused their discretion in making a decision or taking an action. With the exception of Wis. Stat. § 5.06(3), which states that a complaint shall be filed promptly so as not to prejudice the rights of any party – and in the case of a decision made related to nominations, candidate qualifications or ballot preparation no later than 10 days after the complainant knew or should have known of the alleged violation – the statute does not provide specific deadlines or procedures for local election official complaints. An Editor note currently inserted into EL Ch. 20 alerts individuals that the complaint procedures set forth in Wis. Stat. § 5.05(2m) supersedes the administrative code chapter, and that the chapter only applies to complaints filed under Wis. Stat. § 5.06. Amendments to EL Ch. 20 will be made to remove and modify provisions of this chapter to focus solely on complaints filed under Wis. Stat. § 5.06 which include: clarifying if and when parties are entitled to appear before the Commission; clarifying if and when an evidentiary hearing is conducted by the Commission; removing provisions related to party settlements as that is not applicable to complaints filed against local election officials; and the processes used by the Commission and its staff to issue decisions.

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:

Complaints filed with the Commission are either filed under Wis. Stat. § 5.05(2m) or Wis. Stat. § 5.06. If a complaint is filed under Wis. Stat. § 5.05(2m), the procedures and timelines within that statutory section are followed. For complaints filed against local election officials under Wis. Stat. § 5.06, the applicable procedures and timelines contained in current EL Ch. 20 are followed.

Proposed Policy:

The Commission proposes to amend current EL Ch. 20 to remove and modify provisions of this chapter to focus solely on complaints filed under Wis. Stat. § 5.06 which include: clarifying if and when parties are entitled to appear before the Commission; clarifying if and when an evidentiary hearing is conducted by the Commission; removing provisions related to party settlements as that is not applicable to complaints filed against local election officials; and the processes used by the Commission and its staff to issue decisions.

Alternatives:

If the Commission does not amend EL Ch. 20, provisions not applicable to complaints filed under Wis. Stat. § 5.06 will remain, which has caused confusion in the past and could continue to cause confusion for individuals looking to file a complaint with the Commission.

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

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 changes will affect individuals who file complaints with the Commission under Wis. Stat. § 5.06, alleging a local election official failed to comply with an election law or abused their discretion in administering an election law.

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 proposed rule deals with the procedures used to file and process complaints filed with the Commission against local election officials. The Commission is not aware of any existing or proposed federal regulation that is applicable.

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 none. The proposed rules will not affect small businesses.

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