

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

Rule No.: EL Ch. 7 - Approval and Security of Electronic Voting Equipment and Ballot Security

Relating to: Approval and Security of Electronic Voting Equipment and Ballot Security

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 repeal, recreate and rename current Wis. Adm. Code EL Ch. 7 – Approval of Electronic Voting Equipment (“EL Ch. 7”), related to the approval of electronic voting equipment. The original rules governing this topic have not been substantively updated since 2000. The Commission seeks to update the rules which govern the approval of electronic voting equipment to bring them in line with current technology, modes and practices. The new rule will also address ballot and electronic voting system security which was the topic of an emergency rule that has since expired (former Wis. Admin. Code GAB Ch. 5 – Ballot and Electronic Voting System Security). A previous Government Accountability Board statement of scope to repeal and recreate Wis. Adm. Code GAB Ch. 7 was approved in 2015 (SS 046-15). With the Wisconsin Elections Commission beginning operations on June 30, 2016, the Commission now resubmits this statement of scope to repeal and recreate current EL Ch. 7 and incorporate former GAB Ch. 5 to govern these important topics.

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:

Current EL Ch. 7 was originally published in 2000 (under different chapters based on the agency that oversaw elections at that time) and has not been amended except for renumbering and a correction in 2008. (Register April 2008 No. 628). EL Ch. 7 currently establishes a number of criteria which must be met for an electronic voting system to be approved for use in Wisconsin. It does not include guidelines to address technological and policy issues that have arisen in recent years, such as approval of engineering change orders, commercial off the shelf systems, approval of new components for equipment that was previously federally certified and approved for use in Wisconsin and other equipment that has not been federally certified.

Proposed Policy:

The Commission seeks to update the rules which govern the approval of electronic voting equipment to bring them in line with current technology, modes and practices. The recreated rules would include guidelines to address technological and policy issues that have arisen in recent years, such as approval of engineering change orders, commercial off the shelf systems, approval of new components for equipment that was previously federally certified and approved for use in Wisconsin and other equipment that has not been federally certified. The rules would

also ensure the security, review and verification of software components used with each electronic voting system approved by the Commission. The verification procedures will ensure that the software components correspond to the instructions used by the system to count votes. Additionally, provisions governing security of electronic voting equipment and ballots would be incorporated into the new rule, which were previously in place under a separate emergency rule which has since expired. Combining these rules would put this information into one set of rules dealing with the same subject matter.

Alternatives:

If the Commission does not repeal and recreate current EL Ch. 7, current out of date provisions governing the approval of electronic voting equipment would remain in the rule. The Commission could again promulgate a separate chapter of rules dealing with electronic voting equipment and ballot security instead of combining it with the procedures used to test and approve electronic voting equipment used in this State. In addition, policies and procedures enacted by the elections agency related to these topics would not have the force of law afforded by an administrative rule and the legislative oversight of the rules process.

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).

Wis. Stat. § 5.93, expressly authorizes the board to “promulgate reasonable rules for the administration of this [Electronic Voting Systems] subchapter.”

Wis. Stat. § 5.905(3) states that the Elections Commission “shall promulgate rules to ensure that the security, review and verification of software components used with each electronic voting system approved by the commission.”

Wis. Stat. § 5.87(2) states that the Elections Commission “shall, by rule, prescribe uniform standards for determining the validity of votes cast or attempted to be cast with each electronic voting system approved for use in this state under s. 5.91. The rules shall apply only to situations that may arise in which the validity of a vote or attempted vote cast by an elector utilizing a particular system cannot be determined under s. 7.50.”

Wis. Stat. § 7.08(1)(d) states that the Elections Commission shall “[p]romulgate rules for the administration of the statutory requirements for voting machines and electronic voting systems and any other voting apparatus which may be introduced in this state for use at elections.”

5. Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

300 - 350 hours.

6. List with description of all entities that may be affected by the proposed rule:

This rule will affect manufacturers and vendors of electronic voting equipment, vendors that provide programming of electronic voting equipment, local election officials including county and municipal clerks, election inspectors and voters.

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 U.S. Election Assistance Commission (“EAC”) operates a voting system testing and certification program which certifies, decertifies and recertifies voting system hardware and software and accredits testing laboratories to conduct the testing. Voting systems are tested at the federal level to determine if they meet the guidelines and specifications set forth in the Voluntary Voting System Guidelines (VVSG). Documentation, including proof that a system has obtained EAC certification is submitted to the Wisconsin Elections Commission as part of the application process to obtain State certification.

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 new rules is minimal to none. Voting equipment vendors are already required to pay the actual cost of the testing campaign that the State conducts prior to certification. Nothing in the new rule is anticipated to significantly impact that requirement. Rather the rule will primarily formalize existing procedures and requirements of the State voting equipment approval process. The proposed rules will not affect small businesses.

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