

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: Emergency Rule pursuant to Wis. Stat. § 227.24(1)(a)

FINDING OF EMERGENCY:

This Statement of Scope pertains to the promulgation of an emergency rule under Wis. Stat. § 227.24(1)(a). The preservation of the public peace, safety, and welfare necessitates putting the rule into effect prior to the time it would take effect of the agency complied with the procedures. Wis. Stat. § 227.24(1)(a).

The preservation of peace, safety, and welfare of Wisconsin elections necessitates putting this rule into effect prior to the time it would take to promulgate it normally under chapter 227. In only six months, February 2024 will kick off the election cycle for a major presidential election year, which is expected to produce high voter turnout and high levels of scrutiny on Wisconsin's election procedures. Emergency rulemaking will provide the Commission an opportunity to address election administration needs ahead of the elections in 2024. There simply is not enough time to promulgate permanent rules on these topics and fully implement them before major elections in 2024, unless the Commission promulgates them as emergency rules under § 227.24(1)(a).

The Commission has already begun to receive public comments regarding candidates likely to seek ballot access for elections in 2024.

RULE ANALYSIS

Pursuant to §§ 227.24(1)(e)1d. & 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. The proposed rule would create an administrative process for individuals to bring challenges against the Declarations of Candidacy that are filed by all candidates for local, state, and federal office in Wisconsin 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.

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).

There is currently no clear administrative or statutory process for an individual to challenge the validity or sufficiency of a candidate's Declaration of Candidacy, which includes challenges to the candidate's sworn certification that he or she meets or will meet the applicable requirements for holding office. In the administrative code, Rule EL 2.07 only explicitly applies to challenges to nomination papers. Not all candidates for office in Wisconsin are required to file nomination papers. *See, e.g.*, Wis. Stat. § 8.12.

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.

The alternative would be to not promulgate this rule, leaving the Commission and local filing officers in the difficult position of using the current Chapter EL 2 to administer challenges that concern the requirements of the declaration of candidacy far more directly than the nomination papers. It also would leave the Commission specifically with cross references that do not clearly relate to the time-limited requirements of ballot access challenges.

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."

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 100 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 and streamline the ballot access

challenge processes. The proposed rule would do so 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, or local filing officers, would hear and decide challenges outside of the sufficiency of nomination papers.

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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