

# WISCONSIN ELECTIONS COMMISSION

212 EAST WASHINGTON AVENUE, 3RD FLOOR  
POST OFFICE BOX 7984  
MADISON, WI 53707-7984  
(608) 261-2028  
ELECTIONS@WI.GOV  
ELECTIONS.WI.GOV



COMMISSIONERS

BEVERLY R. GILL  
JULIE M. GLANCEY  
ANN S. JACOBS  
JODI JENSEN  
VACANCY

MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

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## Report From Agency

September 6, 2017

Mr. Patrick Fuller  
Assembly Chief Clerk  
Attn: Kay Inabnet  
17 West Main St., Room 401  
Madison, WI 53703

Mr. Jeff Renk  
Senate Chief Clerk  
Attn: Jeff Beighley  
Room B20 Southeast  
State Capitol  
Madison, WI 53703

Hand Delivered Via Clearinghouse Rule Jacket and Via Email

Re: **Notice of Administrative Rule in Final Form  
Clearinghouse Rule 17-042  
EL Chapter 21, relating to Practice and Procedure**

Dear Mr. Fuller and Mr. Renk:

Please note that EL Chapter 21 (Clearinghouse Rule 17-042), relating to Practice and Procedure is in final draft form and is being submitted to your offices in accordance with the requirements of Wis. Stat. § 227.19 (2) and (3) for referral to the appropriate committees. The appropriate notice of this submission will be made to the Legislative Reference Bureau and the Administrative Rules Clearinghouse.

Enclosed please find, in triplicate, the Notice and Report of the Wisconsin Elections Commission with the required attachments for this rule.

If you have any questions, please feel free to contact me at (608) 267-0953 or [nathan.judnic@wi.gov](mailto:nathan.judnic@wi.gov).

Regards,

**WISCONSIN ELECTIONS COMMISSION**



Nathan W. Judnic, Legal Counsel

Enclosures

## REPORT OF THE WISCONSIN ELECTIONS COMMISSION

CLEARINGHOUSE RULE 17-042

WIS. ADM. CODE EL CH. 21

The Wisconsin Elections Commission proposes an order to repeal ch. EL 21, relating to practice and procedure. This report is filed with the following information and attached documents pursuant to Wis. Stat. § 227.19 (3).

**A. Proposed rule.** The proposed rule in final form as approved by the Governor's Office pursuant to Wis. Stat. § 227.185 is attached to this report.

**B. Rule summary.**

### ANALYSIS PREPARED BY WISCONSIN ELECTIONS COMMISSION:

1. **Statutes interpreted:** s. 5.06(6a), Stats.
2. **Statutory authority:** ss. 5.05(1)(f), 227.11(2)(a), Stats.
3. **Explanation of agency authority:** The Elections Commission has the responsibility for the administration of election laws and other law relating to elections and election campaigns, other than laws relating to campaign financing. s. 5.05 (1), Stats. 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.” s. 5.05(1)(f), Stats. The Elections Commission “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[.]” s. 227.11 (2) (a), Stats.
4. **Related statute(s) or rule(s):** Wisconsin Statutes s. 5.05(6a) outlines the process for the Commission and the Commission Administrator to provide formal and informal advisory opinions on subject matter covered by chs. 5 to 10 or 12, Stats.
5. **Plain language analysis:** Current EL Ch. 21 was originally a State Ethics Board rule that transferred to the Government Accountability Board and was then split out and placed in both the Ethics Commission and Ethics Commission's chapters on June 30, 2016. The Elections Commission rarely issues formal or informal advisory opinions on its subject matter, but if it did, it would follow the procedures set forth in Wis. Stat. § 5.05(6a). There is nothing in current EL Ch. 21 that is relevant to the process set forth in Wis. Stat. § 5.05(6a). Therefore EL Ch. 21 should be repealed.

6. **Summary of, and comparison with, existing or proposed federal regulations:** The Not applicable, repealing rule in entirety.
7. **Comparison with rules in adjacent states:** Not applicable, repealing current rule in entirety.
8. **Summary of factual data and analytical methodologies:** Adoption of this rule was not predicated on any factual data or analytical methodologies. As part of the transition from the Government Accountability Board to the Wisconsin Elections Commission, the plan called for transferring GAB Ch. 6 in its entirety to the Wisconsin Elections Commission and rename it EL Ch. 6. Upon transfer, portions of the rule that no longer applied to the Wisconsin Elections Commission were to be removed.
9. **Analysis and supporting documentation used to determine effect on small businesses:** There will be no impact on small business.
10. **Effect on small business:** The creation of this rule does not affect small business.
11. **Agency contact person:** Nathan W. Judnic, Legal Counsel, Wisconsin Elections Commission, 212 E. Washington Avenue, 3<sup>rd</sup> Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 267-0953; [nathan.judnic@wisconsin.gov](mailto:nathan.judnic@wisconsin.gov)
12. **Submission of written comments:** Comments may be submitted by mail or email to the above contact or to the Wisconsin Elections Commission generally, 212 E. Washington Ave., 3<sup>rd</sup> Floor, P.O. Box 7984, Madison, WI 53701-7984; or sent by email to [elections@wi.gov](mailto:elections@wi.gov). Comments may also be submitted to the Wisconsin Elections Commission using the Wisconsin Administrative Rules website at: <http://adminrules.wisconsin.gov>.  
  
Comments on this rule were accepted until close of business on June 19, 2017. The Commission received no comments on this rule.
13. **Public hearing:** The proposed rule was published under the 30-day notice procedure in s. 227.16 (2) (e). The proposed rule will be adopted without public hearing, unless a petition is received by the agency, within 30 days after publication of the notice, signed by one of the following:
  - (a) Twenty-five natural persons who will be affected by the rule.
  - (b) A municipality that will be affected by the rule.
  - (c) An association that is representative of a farm, labor, business or professional group that will be affected by the rule.

The Commission received no petitions related to this rule and therefore no public hearing was conducted.

- C. Reference to applicable forms.** None.
- D. The fiscal estimate.** The fiscal estimate and economic impact analysis for this rule is attached to this report.
- E. Any statement, suggested changes, or other material submitted to the agency by the SBRRB.** None.
- F. Economic impact analysis.** The fiscal estimate and economic impact analysis for this rule is attached to this report.
- G. Any revised economic impact analysis prepared by the agency.** None.
- H. Any report prepared by DOA for a proposed rule with \$20,000,000 or more in implementation and compliance costs.** None.
- I. Energy impact report.** None.
- J. Rules Clearinghouse Report.** The Rules Clearinghouse Report for this rule is attached to this report.
- K. Detailed statement explaining the basis and purpose of the proposed rule, including how the proposed rule advances relevant statutory goals or purposes.**

Current EL Ch. 21 was originally a State Ethics Board rule that transferred to the Government Accountability Board and was then split out and placed in both the Elections Commission and Ethics Commission's chapters on June 30, 2016. The Elections Commission rarely issues formal or informal advisory opinions on its subject matter, but if it did, it would follow the procedures set forth in Wis. Stat. § 5.05(6a). There is nothing in current EL Ch. 21 that is relevant to the process set forth in Wis. Stat. § 5.05(6a). Therefore EL Ch. 21 should be repealed.

- L. Summary of public comments to the proposed rule and the agency's response to those comments, and an explanation of any modification made in the proposed rule as a result of public comments or testimony received at a public hearing.** No public comments were received on this rule. No public hearing was conducted for this rule pursuant to the 30-day notice procedure in s. 227.16 (2) (e).
- M. List of the persons who appeared or registered for or against the proposed rule at a public hearing.** None.

- N. Changes to rule summary or fiscal estimate.** None.
- O. Response to Rules Clearinghouse Report.** The Wisconsin Elections Commission accepted the recommendations of the Rules Clearinghouse Report in whole.
- P. For a proposed rule that will have an effect on small businesses, a final regulatory flexibility analysis that contains the information in s. 227.19(3)(e).** None.
- Q. Changes made due any energy impact report submitted.** None.
- R. Report from DOA for rules affecting housing in the state.** None.
- S. Response to any report prepared by SBRRB.** None.

Date submitted: September 6, 2017

ORDER ADOPTING RULE  
Wisconsin Elections Commission

The Wisconsin Elections Commission proposes an order to repeal EL Ch. 21, relating to practice and procedure.

ANALYSIS PREPARED BY WISCONSIN ELECTIONS COMMISSION:

1. **Statutes interpreted:** ss. 5.05(6a), Stats.
2. **Statutory authority:** ss. 5.05(1)(f), 227.11(2)(a), Stats.
3. **Explanation of agency authority:** The Elections Commission has the responsibility for the administration of election laws and other law relating to elections and election campaigns, other than laws relating to campaign financing. s. 5.05 (1), Stats. 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.” s. 5.05(1)(f), Stats. The Elections Commission “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[.]” s. 227.11 (2) (a), Stats.
4. **Related statute(s) or rule(s):** Wisconsin Statutes s. 5.05(6a) outlines the process for the Commission and the Commission Administrator to provide formal and informal advisory opinions on subject matter covered by chs. 5 to 10 or 12, Stats.
5. **Plain language analysis:** Current EL Ch. 21 was originally a State Ethics Board rule that transferred to the Government Accountability Board and was then split out and placed in both the Ethics Commission and Ethics Commission’s chapters on June 30, 2016. The Elections Commission rarely issues formal or informal advisory opinions on its subject matter, but if it did, it would follow the procedures set forth in Wis. Stat. § 5.05(6a). There is nothing in current EL Ch. 21 that is relevant to the process set forth in Wis. Stat. § 5.05(6a). Therefore EL Ch. 21 should be repealed.
6. **Summary of, and comparison with, existing or proposed federal regulations:** Not applicable, repealing rule in entirety.
7. **Comparison with rules in adjacent states:** Not applicable, repealing current rule in entirety.

8. **Summary of factual data and analytical methodologies:** Adoption of this rule was not predicated on any factual data or analytical methodologies. As part of the transition from the Government Accountability Board to the Wisconsin Elections Commission, the plan called for transferring GAB Ch. 21 in its entirety to the Wisconsin Elections Commission and rename it EL Ch. 21. Upon transfer, portions of the rule that no longer applied to the Wisconsin Elections Commission were to be removed. EL Ch. 21 should be repealed in its entirety.
9. **Analysis and supporting documentation used to determine effect on small businesses:** There will be no impact on small business.
10. **Effect on small business:** The creation of this rule does not affect small business.
11. **Agency contact person:** Nathan W. Judnic, Legal Counsel, Wisconsin Elections Commission, 212 E. Washington Avenue, 3<sup>rd</sup> Floor, P.O. Box 7984, Madison, Wisconsin 53707-7984; Phone 267-0953; [nathan.judnic@wisconsin.gov](mailto:nathan.judnic@wisconsin.gov)
12. **Submission of written comments:** Comments may be submitted by mail or email to the above contact or to the Wisconsin Elections Commission generally, 212 E. Washington Ave., 3<sup>rd</sup> Floor, P.O. Box 2973, Madison, WI 53701-2973; or sent by email to [elections@wi.gov](mailto:elections@wi.gov). Comments may also be submitted to the Wisconsin Elections Commission using the Wisconsin Administrative Rules website at: <http://adminrules.wisconsin.gov>.

Comments on this rule will be accepted until close of business on June 19, 2017.

13. **Public hearing.** The proposed rule was published under the 30-day notice procedure in s. 227.16 (2) (e). The proposed rule will be adopted without public hearing, unless a petition is received by the agency, within 30 days after publication of the notice, signed by one of the following:
  - (a) Twenty-five natural persons who will be affected by the rule.
  - (b) A municipality that will be affected by the rule.
  - (c) An association that is representative of a farm, labor, business or professional group that will be affected by the rule.

#### TEXT OF FINAL DRAFT RULE:

SECTION 1. EL Ch. 21 is repealed.

SECTION 2. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22, Stats.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

X Original    Updated    Corrected

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2. Administrative Rule Chapter, Title and Number

EL Chapter 21, Practice and Procedure

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3. Subject

The Wisconsin Elections Commission seeks to repeal EL Ch. 21 in its entirety.

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4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

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6. Fiscal Effect of Implementing the Rule

X No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes   X No

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9. Policy Problem Addressed by the Rule

The rule relates to the issuance of advisory opinions which is covered by Wis. Stat. § 5.05(6a). The rule is no longer necessary and should be repealed.

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10. 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.

None

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11. Identify the local governmental units that participated in the development of this EIA.

None

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12. 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)

None

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

Eliminate potential conflict in procedure between the rule and the statutes regarding the issuance of advisory opinions.

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14. Long Range Implications of Implementing the Rule

Eliminate potential conflict in procedure between the rule and the statutes regarding the issuance of advisory opinions.

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15. Compare With Approaches Being Used by Federal Government

N/A - repeal

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

N/A - repeal

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17. Contact Name

Nathan W. Judnic

18. Contact Phone Number

608-267-0953

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This document can be made available in alternate formats to individuals with disabilities upon request.



## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### 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:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

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5. Describe the Rule's Enforcement Provisions

N/A

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

Yes     No

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WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE

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**Scott Grosz**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Margit S. Kelley**  
*Clearinghouse Assistant Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Deputy Director*

**CLEARINGHOUSE REPORT TO AGENCY**

**[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]**

**CLEARINGHOUSE RULE 17-042**

AN ORDER to repeal ch. EL 21, relating to practice and procedure.

Submitted by **ELECTIONS COMMISSION**

06-01-2017 RECEIVED BY LEGISLATIVE COUNCIL.

06-13-2017 REPORT SENT TO AGENCY.

MSK:KBO





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WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE

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Scott Grosz  
*Clearinghouse Director*

Margit Kelley  
*Clearinghouse Assistant Director*

Terry C. Anderson  
*Legislative Council Director*

Jessica Karls-Ruplinger  
*Legislative Council Deputy Director*

## CLEARINGHOUSE RULE 17-042

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### **2. Form, Style and Placement in Administrative Code**

- a. In the introductory clause for the proposed order, a relating clause should be inserted to state the subject matter of the proposed order. [s. 1.02 (1) (a), Manual.]
- b. The statement on the finding of emergency could be removed as the proposed order is for the permanent rule.



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VACANCY

MARK L. THOMSEN, CHAIR

ADMINISTRATOR MICHAEL HAAS

**To: Legislative Reference Bureau**

**From: Wisconsin Elections Commission**

## NOTICE

This notice is to inform you that a rule in final draft form was submitted to the chief clerks of the State Senate and State Assembly on September 6, 2017.

Clearinghouse Rule 17-042 has been submitted to repeal ch. EL 21 relating to practice and procedure. The submission of the rule in final draft form also includes the legislative report and attachments and the Legislative Council's staff report. The Governor's Office approved this rule in final draft form on August 31, 2017.

Dated September 6, 2017

**WISCONSIN ELECTIONS COMMISSION**

A handwritten signature in black ink, appearing to read 'Nathan W. Judnic'.

Nathan W. Judnic  
Legal Counsel

Cc: Administrative Rules Clearinghouse ([Clearing.House@legis.wisconsin.gov](mailto:Clearing.House@legis.wisconsin.gov))