

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

1999-00

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Campaigns &
Elections
(AC-CE)

File Naming Example:

Record of Comm. Proceedings ... RCP

- > 05hr_AC-Ed_RCP_pt01a
- > 05hr_AC-Ed_RCP_pt01b
- > 05hr_AC-Ed_RCP_pt02

Published Documents

> Committee Hearings ... CH (Public Hearing Announcements)

> **

> Committee Reports ... CR

> **

> Executive Sessions ... ES

> **

> Record of Comm. Proceedings ... RCP

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*Information Collected For Or
Against Proposal*

> Appointments ... Appt

> **

> Clearinghouse Rules ... CRule

99HR_CRule_99-137_AC-CE_pt01

> Hearing Records ... HR (bills and resolutions)

> **

> Miscellaneous ... Misc

> **



Wisconsin Speaker Pro Tempore
Representative Stephen J. Freese

TO: Members of the Assembly Campaigns and Elections Committee

Rep. Scott Suder, Vice-Chair	Rep. David Travis
Rep. Scott Walker	Rep. David Cullen
Rep. Phil Montgomery	Rep. Mark Miller
Rep. Bonnie Ladwig	Rep. Gary Sherman

FROM: Representative Stephen Freese, Chair

DATE: December 14, 1999

RE: Clearinghouse rule 99-137

On December 13, 1999, the following clearinghouse rule was referred to the Assembly Campaigns and Elections Committee:

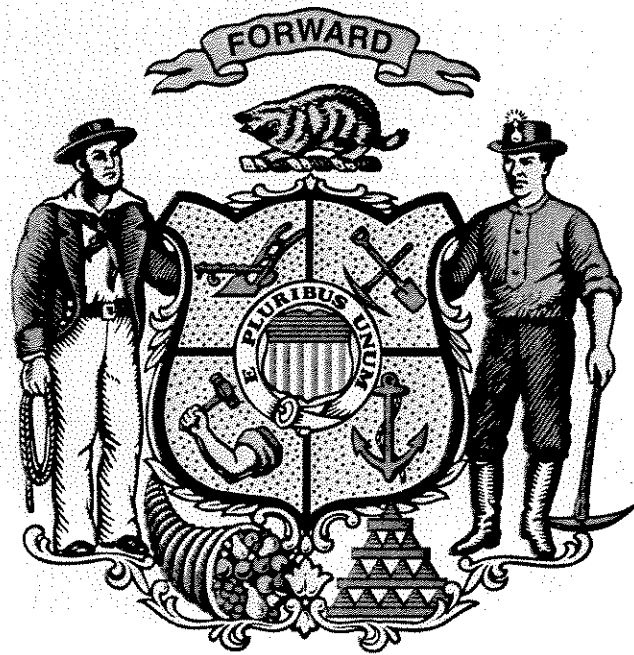
Clearinghouse Rule 99-137, relating to electronic voting.

The deadline for committee action on this rule is **January 12, 2000**. If you would like a copy of the rule, please contact Terri Griffiths in my office at 266-7502. If you are interested in requesting a hearing and/or submitting comments, please do so prior to the deadline date.

Fifty-First Assembly District

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REPORT
OF
STATE ELECTIONS BOARD

Clearinghouse Rule 99-137
Rules Chapter EIBd. 7.01 - 7.03
Wisconsin Administrative Code

ELBd. 7.01-7.03

1. Findings of fact:

The rule interprets ss.5.76, 5.77(2), 5.90, 5.91, 5.92, and 7.23, Stats. The rule establishes a procedure for approval of electronic voting systems for use in Wisconsin elections under s.5.91, Stats.; and a procedure for revocation of approval of electronic voting equipment if the system ceases to comply with s.5.91, Stats., or with this chapter. The rule also codifies the method used to test electronic equipment for compliance with s.5.91, Stats.;

Section 5.91 of the Wisconsin Statutes prohibits the use of any electronic voting system in a Wisconsin election until that system has been approved by the Elections Board. The Board has determined that the procedure for approval of voting equipment should be codified in a rule. The Board will now require an application for approval and that application must be accompanied by allied documentation. The voting equipment will have to follow a prescribed testing procedure demonstrating that the equipment complies with the criteria of s.5.91, Stats. The rule also provides that approval may be revoked if the equipment ceases to meet the criteria of s.5.91, Stats., or to meet other requirements set forth in the rule. The rule applies to any electronic voting system that has not been approved by the Board as of the effective date of the rule.

2. Conclusion and recommended action:

The State Elections Board unanimously concludes that ss.EIBd. 7.01, 7.02 and 7.03 should be created. The creation of these rules is necessary to establish the procedure for the approval and use of new voting systems in Wisconsin, in compliance with s.5.91, Stats. The Board recommends promulgation of this rule.

3. Explanations of modifications to the proposed rule:

The State Elections Board makes no substantive modifications to this rule.

4. List of persons appearing at the public hearing:


No public hearing was held. The rule was submitted pursuant to the 30-day notice procedure of s.227.16(2)(e), Stats. No person who will be affected by the rule filed a petition for a public hearing within the 30-day period provided by that statute.

5. Response to Legislative Council staff report:

The State Elections Board adopts the Legislative Council's staff's comments and has incorporated the suggested changes in the rule with the following exceptions
Respectfully submitted,

November 30, 1999

STATE ELECTIONS BOARD


George A. Dunst, Legal Counsel

WISCONSIN ADMINISTRATIVE CODE

STATE ELECTIONS BOARD

SECTION 1. EIBd Chapter 7, Approval of Electronic Voting Systems, is hereby created.

SECTION 2. EIBd 7.01, 7.02 and 7.03 are created to read:

ELBD 7.01 APPLICATION FOR APPROVAL OF ELECTRONIC VOTING SYSTEM

- (1) An application for approval of an electronic voting system shall be accompanied by all of the following:
 - (a) A signed agreement that the vendor shall pay all costs, related to approval of the system, incurred by the board, its designees and the vendor.
 - (b) Complete specifications for all hardware, firmware and software.
 - (c) All technical manuals and documentation related to the system.
 - (d) Complete instruction materials necessary for the operation of the equipment and a description of training available to users and purchasers.
 - (e) Reports from an independent testing authority accredited by the National Association of State Election Directors (NASED) demonstrating that the voting system conforms to all the standards recommended by the Federal Elections Commission.
 - (f) A signed agreement requiring that the vendor shall immediately notify the board of any modification to the voting system and requiring that the vendor will not offer, for use, sale or lease, any modified voting system, if the board notifies the vendor that the modifications require that the system be approved again.
 - (g) A list showing all the states and municipalities in which the system has been approved for use and the length of time that the equipment has been in use in those jurisdictions.
- (2) The board shall determine if the application is complete and, if it is, shall so notify the vendor in writing. If it is not complete, the board shall so notify the vendor and shall detail any insufficiencies.
- (3) If the application is complete, the vendor shall prepare the voting system for three mock elections, using offices, referenda questions and candidates provided by the board.

ELBD 7.02 AGENCY TESTING OF ELECTRONIC VOTING SYSTEM

- (1) The board shall conduct a test of a voting system, submitted for approval under s. ELBD 7.01, to ensure that it meets the criteria set out in s.5.91, Stats. The test shall be conducted using a mock election for the partisan primary, a mock general election with both a presidential and gubernatorial vote, and a mock nonpartisan election combined with a presidential preference vote.
- (2) The board may use a panel of local election officials and electors to assist in its review of the voting system.
- (3) The board may require that the voting system be used in an actual election as a condition of approval.

ELBD 7.03 CONTINUING APPROVAL OF ELECTRONIC VOTING SYSTEM

- (1) The board may revoke the approval of any existing electronic voting system if it does not comply with the provisions of this chapter. As a condition of maintaining the board's approval for the use of the voting system, the vendor shall inform the board of all changes in the hardware, firmware and software and all jurisdictions using the voting system.
- (2) The vendor shall, at its own expense, furnish, to an agent approved by the board, for placement in escrow, a copy of the programs, documentation and source code used for any election in the state.
- (3) The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium, pursuant to the provisions of s.7.23, Stats.
- (4) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the board.
- (5) For good cause shown, the board may exempt any electronic voting system from strict compliance with ELBD ch.7.

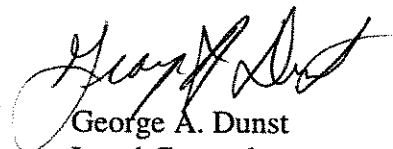
(Dated November 30, 1999)

NOTICE

This notice is to inform you that the proposed rule-making of the State Elections Board, appearing in Clearinghouse Rule 99-137, creating ElBd.ch.7, consisting of 7.01-7.03, is submitted to the presiding officer of each house of the legislature. This submission includes the proposed rule, the Legislative Council's staff's report and the Elections Board's report. In addition, the Elections Board is placing in the Wisconsin Administrative Register a notice that the proposed rules have been submitted to the presiding officer of each house.

Dated November 30, 1999

STATE ELECTIONS BOARD



George A. Dunst
Legal Counsel

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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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 99-137

AN ORDER to create EIBd 7.01, 7.02 and 7.03, relating to electronic voting.

Submitted by **ELECTIONS BOARD**

09-10-99 RECEIVED BY LEGISLATIVE COUNCIL.

10-07-99 REPORT SENT TO AGENCY.

RS:SPH:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

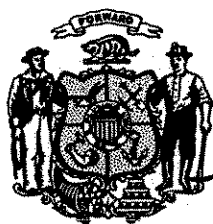
Comment Attached YES NO

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CLEARINGHOUSE RULE 99-137

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In the second sentence of the analysis, the second occurrence of the phrase "ceases to" should be deleted.

b. Clearinghouse Rule 99-137 proposes to create ss. EIBd 7.01, 7.02 and 7.03. In s. EIBd 7.03 (1), the rule makes a reference to "this chapter." However, the rule does not specifically create ch. EIBd 7. The rule should do so and, in addition, give the new chapter a title.

c. In s. EIBd 7.01 (1) (intro.), the phrase "all of" should precede the phrase "the following." Following the introduction, all of the notations indicating a lettered paragraph should be enclosed within parentheses; for example, the notation "a)" should be replaced by the notation "(a)." All of the paragraphs should conclude with a period. Finally, all of the occurrences of the word "Board" in the rule should be replaced by the word "board."

d. In s. EIBd 7.02 (1), the phrase "the voting system" should be replaced by the phrase "a voting system approved under s. EIBd 7.01."

e. Subsection (2) of s. EIBd 7.02 should be incorporated as a second sentence to sub. (1) of s. EIBd 7.02. If this were done, it would be clear that the test referred to in this provision is the test that the board is required to conduct under sub. (1). In the alternative, a cross-reference

to the test identified in sub. (1) could be included in sub. (2), if that provision is retained as a separate subsection.

f. For consistency of style, the directive "must" in subs. (2) and (3) of s. EIBd 7.03 should be changed to "shall."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. EIBd 7.03 (3), the term "escrow," which is a noun, is used as a verb. If this word is retained, it should be used properly--e.g., "place in escrow." Consideration should be given to using terminology that is easily understood by all persons affected by the rule. Since all that appears to be required by this provision is that the vendor provide a copy of the program's documentation and source code to an agent of the board, consideration should be given to using more commonplace terminology, such as "furnish . . . to an agent approved by the board."

b. Section EIBd 7.03 (6) provides that the board may provide "for the exemption of any electronic voting system." From what is the electronic voting system to be exempt? Further, in order to make the rule meaningful, standards should be included to determine when an electronic voting system should be "exempt."