

## WISCONSIN LEGISLATIVE COUNCIL STAFF

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**CLEARINGHOUSE REPORT TO AGENCY**


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[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 ElBd 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)]

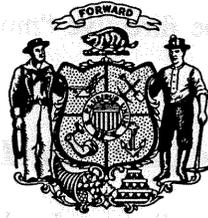
Comment Attached YES  NO

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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."

NOTICE OF PROPOSED RULE

STATE ELECTIONS BOARD

NOTICE IS HEREBY GIVEN that pursuant to ss.5.05(1)(f), 5.93, and 227.11(2)(a), Stats., and interpreting ss.5.76, 5.77(2), 5.90, 5.91, 5.92, and 7.23, Stats., and according to the procedure set forth in s.227.16(2)(e), Stats., the State of Wisconsin Elections Board will adopt the following rule as proposed in this notice without public hearing unless within 30 days after publication of this notice, the Elections Board is petitioned for a public hearing by 25 persons who will be affected by the rule; by a municipality which will be affected by the rule; or by an association which is representative of a farm, labor, business, or professional group which will be affected by the rule.

ANALYSIS PREPARED BY STATE ELECTIONS BOARD:

Statutory authority: s.5.05(1)(f), s.5.93 and s.227.11(2)(a), Stats.

Statutes interpreted: ss.5.76, 5.77(2), 5.90, 5.91, 5.92, and 7.23, Stats.

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.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f), 5.93, and 227.11(2)(a), Stats., the Elections Board hereby creates Rule EIBd 7.01, 7.02 and 7.03 interpreting ss.5.76, 5.77(2), 5.90, 5.91, 5.92, and 7.23, Stats., as follows:

SECTION 1. 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 the following:
- (a) A signed agreement that the vendor shall pay all costs incurred by the Board, its designees and the vendor related to approval of the system.

- (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 (NASSED) demonstrating that the voting system conforms to all the standards recommended by the Federal Elections Commission;
  - (f) A signed agreement that the vendor shall immediately notify the Board of any modification to the voting system and the vendor will not offer for use, sale or lease any modified voting system if the Board notifies the vendor the modifications require that the system be approved again.
  - (g) A list of all the states and municipalities in which the system has been approved for use and how long the equipment has been in use in those jurisdictions.
- (2) The Board shall determine if the application is complete and notify the vendor in writing that the application is complete or detailing 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

- approved under ELBd 7.01*
- (1) The Board shall conduct a test of the voting system to ensure that it meets the criteria set out in s.5.91 Stats.
- (2) The test shall be conducted using a mock election for the partisan primary, the general election with both a presidential and gubernatorial vote and the nonpartisan election combined with a presidential preference vote.
- (3) The Board may use a panel of local election officials and electors to assist in its review of the voting system.
- (4) 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.
- what chapter*

- show*
- (2) The vendor ~~must~~ keep the Board informed of all hardware, firmware and software changes and all jurisdictions using the voting system as a condition of maintaining the Board's approval for the use of the voting system.
  - (3) The vendor ~~must~~, *shall* at its expense, escrow a copy of the programs, documentation and source code used for any election in the state with an agent approved by the Board.
  - (4) 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.
  - (5) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the Board.
  - (6) The Board may provide for the exemption of any electronic voting system.

INITIAL REGULATORY FLEXIBILITY ANALYSIS:

The creation of this rule does not affect business.

FISCAL ESTIMATE:

The creation of this rule has no fiscal effect.

CONTACT PERSON:

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The creation of this rule will take effect on the first day of the month following its publication in the Wisconsin Administrative Register pursuant to s.227.22(2), Stats.

Dated September 9, 1999

*Kevin J. Kennedy*  
KEVIN J. KENNEDY  
Executive Director  
State Elections Board

*from what  
and under what  
standards.*