

Report From Agency

REPORT OF STATE ELECTIONS BOARD

Clearinghouse Rule 06-137
Rules Section EIBd. 3.04
Wisconsin Administrative Code

The State of Wisconsin Elections Board proposes an order to create EIBd 3.04, relating to election-day voter registration.

ANALYSIS PREPARED BY STATE ELECTIONS BOARD:

1. Statutory authority: ss.5.05(1)(f) and 227.11(2)(a):
2. Statutes interpreted: ss.5.02(6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.97, Stats.
3. Explanation of agency authority: In 2002, Congress enacted the Help America Vote Act to address problems and issues that surfaced in the 2000 presidential election. Section 303(a)(5)(A)(i) of the Act provided that “an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver’s license, the applicant’s driver’s license number.” To comply with federal law, but also to avoid disenfranchising those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver’s license but do not provide that number on their registration form, the Board has adopted EIBd s.3.04, providing for the issuance of a provisional ballot to those registrants, pursuant to s.6.97, Stats. Under that statute, the provisional ballot will be counted if the registrant casting a provisional ballot provides his or her driver’s license number to the clerk of the municipality in which the registrant has voted, not later than 4:00 p.m., on the day following the election.

Previously, the Board’s policy had been to process the election-day registration of those registrants who failed to list their driver’s license number on their

registration application, if they had provided, on their registration form, a Wisconsin-issued Identification Card Number or the last four digits of their Social Security Number. Whether that policy complied with federal law had been in issue. To assure that Wisconsin's practice complies with federal law, the Elections Board proposes to promulgate the following rule providing for the issuance of a provisional ballot to those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver's license but do not provide that license number on their registration form. This rule is consistent with both federal and state law and has been approved by the U. S. Department of Justice.

4. Related statute(s) or rule(s): Subchapter II of Chapter 6, Stats. and EIBd chapter 3, Wis. Adm. Code, Voter Registration
5. Plain language analysis: The proposed rule provides the method by which persons who are not registered and who do not provide their driver's license number, for whatever reason, may register and vote on election-day.
6. Summary of, and comparison with, existing or proposed federal regulations: The rule is consistent with Section 303(a)(5)(A)(i) of the Help America Vote Act, which provides that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number."
7. Comparison with rules in adjacent states: The rule is consistent with the requirements in Illinois, Iowa, Michigan and Minnesota, similar to those in federal law, that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number."
8. 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.
9. Explanations of modifications to the proposed rule:

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

10. 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.

11. Conclusion and recommended action:

The State Elections Board unanimously concludes that EIBd 3.04 should be created. The creation of this rule is necessary to facilitate and ensure full compliance with the voter registration requirements of the Help America Vote Act while avoiding the disenfranchisement of Wisconsin electors

The Board recommends promulgation of this rule.

Respectfully submitted,

May 30, 2007

STATE ELECTIONS BOARD

George A. Dunst, Legal Counsel

Rules/ rules 2005/amnd elbd 3 04/step 2/rpt t o leg create 3 04 cmplt rpt