

FEB 27 2001

Barnett-Lewis, William

From: Austin, David
Sent: Thursday, February 22, 2001 4:48 PM
To: Barnett-Lewis, William
Subject: clearinghouse rule 00-153

Dear Elections Board:

It is customary for state agencies that are revising administrative rules to provide a copy of the rule package to the co-chairs of the Joint Committee for Review of Administrative Rules at the same time the rule is submitted to the Legislature for review.

The Elections Board recently submitted clearinghouse rule 00-153 for legislative rule.

Can you provide a copy of the rule package to me?

Thanks,

David Austin
Senator Robson's office
6-2253

FEB 27 2001

NOTICE

This notice is to inform you that the proposed rulemaking of the State Elections Board, appearing in Clearinghouse Rule 00-153, amending ElBd.2.05 and 2.07, 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 January 19, 2001

STATE ELECTIONS BOARD

George A. Dunst
Legal Counsel

REPORT
OF
STATE ELECTIONS BOARD

Clearinghouse Rule 00-153
Rules Chapter ElBd. 2.05 - 2.07
Wisconsin Administrative Code

El.Bd. 2.05-2.07

1. Findings of fact:

Sections 8.10, 8.15, 8.20, 8.50 and 9.10, Stats., provide for nominating candidates to elective office through the filing of nomination papers. Sections ElBd 2.05 and 2.07 of the Wisconsin Administrative Code set forth the Elections Board's rules for determining the sufficiency of those nomination papers and for determining the validity of challenges to nomination papers. 1999 Wisconsin Act 182 amended those statutory sections to change the affidavit of the circulator on nomination papers to a certificate of the circulator. The Board found that its rules, ss.2.05 and 2.07 needed to be amended, and that s. ElBd 2.05(15) had to be repealed to reflect the statutory changes. Also, the Board found that its existing practices of allowing errors in nomination papers to be corrected by the filing of a correcting affidavit, and requiring challenges to be filed in three calendar, not business, days needed to be codified.

The rule interprets ss.8.02, 8.04, 8.05(3) and (4), 8.07, 8.10, 8.11, 8.15, 8.20, 8.30, 8.50(3)(a) and 9.10, Stats. The rule proposes clearer standards for filing officers to determine whether nomination papers comply with the requirements of ch. 8 of the Wisconsin Statutes and proposes more specific guidance to candidates and other circulators to enable them to so comply. The old rule was no longer consistent with board policy and practice or with the legislature's having changed the circulator's affidavit to a circulator's certificate. The rule proposes that nomination papers be numbered. The rule also proposes that correctable nomination paper errors may be corrected by the filing of a correcting affidavit within three calendar days of the filing of the nomination papers. Challenge complainants will be required to certify that a copy of their challenge complaint will be delivered to the challenged candidate within 24 hours of their challenge. Receipt of a complaint by a respondent or an agent of the respondent, within 24 hours of the filing of the complaint, will constitute timely delivery. Both challenge complainants and respondents will be given three calendar days, not business days, in which to file their pleadings.

2. Conclusion and recommended action:

The State Elections Board unanimously concludes that ss.ElBd. 2.05 and 2.07 should be amended as described and 2.05(15) should be repealed. The amendment to

these rules is necessary to conform the rules to statutory changes and to existing Elections Board practices. 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 exception:

The proposed rule has been amended to require that a challenge complainant shall certify to the filing officer that a copy of the challenge complaint will be delivered to the respondent within 24 hours of the filing of the complaint. The rule proposes to define the term delivery as receipt by the respondent or the respondent's agent and proposes that timely delivery is receipt by the respondent, or the respondent's agent, within 24 hours of the filing of the complaint.

Respectfully submitted,

January 18, 2001

STATE ELECTIONS BOARD

George A. Dunst
Legal Counsel

WISCONSIN ADMINISTRATIVE CODE

STATE ELECTIONS BOARD

SECTION 1. EIBd 2.05(2), (4), and (14) are amended to read:

(2) In order to be timely filed, all nomination papers shall be in the physical possession of the filing officer by the statutory deadline. Each of the nomination papers shall be numbered, before they are filed, and the numbers shall be assigned sequentially, beginning with the number "1".

(4) Any information which appears on a nomination paper is entitled to a presumption of validity. Notwithstanding any other provision of this chapter, errors in information contained in a nomination paper, committed by either a signer or a circulator, may be corrected by an affidavit of the circulator, an affidavit of the candidate, or an affidavit of a person who signed the nomination paper. The person giving the correcting affidavit shall have personal knowledge of the correct information and the correcting affidavit shall be filed with the filing officer not later than three calendar days after the applicable statutory due date for the nomination papers.

(14) No signature on a nomination paper shall be counted unless the elector who circulated the nomination paper completes and signs the affidavit-certificate of circulator ~~under oath~~ and does so after, not before, the paper is circulated. No signature may be counted when the residency of the circulator cannot be determined by the information given on the nomination paper.

SECTION 2. EIBd 2.05(15) is repealed and the following subsections are re-numbered:

EIBd 2.05(16) is re-numbered EIBd 2.05(15)

EIBd 2.05(17) is re-numbered EIBd 2.05(16)

EIBd 2.05(18) is re-numbered EIBd 2.05(17)

SECTION 3. EIBd 2.05(16)(b) is amended to read

(16)(b) The signature is dated after the date of ~~notarization~~ certification contained in the affidavit certificate of circulator.

SECTION 4. EIBd 2.07(2)(a) and (2)(b) are amended to read:

EIBd 2.07(2)(a) Any challenge to the sufficiency of a nomination paper shall be made by verified complaint, filed with the appropriate filing officer. The complainant shall certify to the filing officer that a copy of the complaint shall be delivered to the respondent within 24 hours of the complaint being filed with the filing officer. Receipt of the complaint by the respondent, or the respondent's

agent, constitutes delivery. Receipt of the complaint by the respondent, or the respondent's agent, within 24 hours of the complaint being filed constitutes timely delivery. The form of the complaint, ~~and its filing and its service~~ shall comply with the requirements of ch. EIBd 10. Any challenge to the sufficiency of a nomination paper shall be filed within 3 business calendar days after the filing deadline for the challenged nomination papers. The challenge shall be established by affidavit, or other supporting evidence, demonstrating a failure to comply with statutory or other legal requirements.

(b) The response to a challenge to nomination papers shall be filed, by the candidate challenged, within 3 business calendar days of the filing of the challenge and shall be verified.

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:

George A. Dunst
Legal Counsel, State Elections Board
132 E. Wilson Street, P.O. Box 2973
Madison, Wisconsin 53701-2973; Phone 266-0136

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 January 19, 2001

KEVIN J. KENNEDY
Executive Director