

Clearinghouse Rule 07-043

NOTICE OF PROPOSED RULE

STATE ELECTIONS BOARD

NOTICE IS HEREBY GIVEN that pursuant to ss. 5.05(1)(f) and 227.11(2)(a), Stats., and interpreting ss.5.02(14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, 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:

1. Statute(s) interpreted: ss.5.02(14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats.
2. Statutory authority: ss.5.05(1)(f), 6.36(6), and 227.11(2)(a), Stats.
3. Explanation of agency authority: This amended rule interprets ss.5.02(14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information or data from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule according to the schedule established by the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s.19.35(3), Stats.: “the actual, necessary and direct cost of reproduction and transcription of the record.” In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate rule reflecting both cost components as required by new statute, s.6.36, Stats. The legislature in s.6.36(6), Stats., has directed the Board to promulgate that rule.

4. Related statute(s) or rule(s): s.19.35, Stats.
5. Plain language analysis: The rule provides the methods by which the Elections Board staff will calculate the pricing to fulfill requests for voter registration data that are contained within the Statewide Voter Registration System.

6. Summary of, and comparison with, existing or proposed federal regulations: The federal government does not have a voter registration system and does not provide voter registration data for which it could exact a charge.
7. Comparison with rules in adjacent states: Illinois, Iowa, Michigan and Minnesota all have voter registration data systems which collect a charge for data comparable to Wisconsin's.
8. Summary of factual data and analytical methodologies: The legislature has directed the board to calculate a cost of data and record reproduction and a cost of list maintenance and build those costs into its charges for copies of voter registration data and records. Those are the only data or methodology that affects the rule.
9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: The rule will have no effect on small business or economic impact.
10. Effect on small business: The rule has no effect on business.
11. Agency contact person: George A. Dunst
Legal Counsel, State Elections Board
17 West Main Street, P.O. Box 2973,
Madison, Wisconsin 53701-2973; Phone 266-0136;
(george.dunst@seb.state.wi.us)
12. Place where comments are to be submitted and deadline for submission:
State Elections Board
17 West Main Street, P.O. Box 2973
Madison, Wisconsin 53701-2973; Phone 266-0136; (elections.state.wi.us)
Deadline for submission: June 4, 2007.

Pursuant to the authority vested in the State of Wisconsin Elections Board by ss.5.05(1)(f) and 227.(11)(2)(a), Stats., the Elections Board hereby creates Rule EIBd 3.50 interprets ss.5.02(14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats.:

SECTION 1. EIBd 3.50 is created to read:

3.50 Charges for voter registration data.

(1) Definitions: As used in this rule:

- (a) "Custom report" means a report that is not programmed to run in the Statewide Voter Registration System at the time a request for the report is made.
- (b) "Election official" has the same meaning as provided in s.5.02 (4e), Stats.
- (c) "Official registration list" has the same meaning as provided in s.6.36, Stats.

- (d) "Protected information" means any information that is protected from general public disclosure by ss.6.36(1)(b)1.a., and 6.47, Stats.
 - (e) "Report" means a defined list of related voter registration data records generated from the Statewide Voter Registration System.
 - (f) "Voter Registration Data" means data contained in the official registration list.
 - (g) "Voter Registration Data Record" means a set of related information requested from the official registration list which consists of a core data element and related attributes. A core data element is the basic unit of data that is being requested, including, but not limited to, a voter name, candidate, election official, or address. The related attributes consist of pieces of data associated with that core data element.
- (2) The official registration list shall be open to public inspection consistent with the requirements of ss. 6.36, 6.45 through 6.47, and ss.19.31 through 19.36, Stats.
 - (3) Any person may obtain, from the official registration list, voter registration data that is not protected information, upon payment of the applicable charges.
 - (4) The charge for reports in electronic format is a \$25 base fee per report plus \$5 for the first 1,000 voter registration data records in the report, plus \$5 for each additional 1,000 voter registration data records, rounded to the nearest thousand. The maximum charge for an electronic report is \$12,500.
 - (5) The charge for a paper copy of a report is \$.25 per page, plus the cost of postage and shipping.
 - (6) Any request for a report or custom report submitted to the State Elections Board shall either be made in writing by the requester or shall be reduced to writing by the board's staff. Any request by the board for payment in advance for the report requested shall include a copy of the report request in writing as submitted by the requester or as memorialized by the board's staff.
 - (7) Any person may request a copy of the poll list used at an election from the municipal or county clerk who has custody of the list. The cost of a copy of a poll list provided by a municipal or county clerk shall be a fee determined by that clerk not to exceed the cost of reproduction.
 - (8) The state elections board, its staff, and each municipal or county election official shall take steps to ensure that any protected information contained in the Statewide Voter Registration System, or on a poll list, is not made available for public inspection.
 - (9) If a request for voter registration data requires a custom report, and the elections board staff determines that it can produce the report, the cost of producing the custom report charged to the requester shall be calculated by the board's staff on a case-by-case basis and shall include, in addition to the costs articulated in subs. 4 or 5, including any applicable costs of handling and mailing, costs of reproduction, including programming costs; and the costs of

maintenance of the SVRS as authorized by s.6.36(6), Stats. Requests fulfilled under this subsection are not subject to the maximum charge limitations in subs. 4 and 5.

- (10) The fees received from requests for voter registration data will remain with the municipality, county, or the State Election Board, whoever produces and provides the report.

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
17 West Main 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 May 3, 2007

KEVIN J. KENNEDY
Executive Director
State Elections Board