

Clearinghouse Rule 15-047

Proposed Rule Government Accountability Board WIS. ADMIN. CODE GAB Ch. 10

The statement of scope for these rules, SS 038-15, was approved by the Governor on April 3, 2015, published in Register No. 712A2 on April 13, 2015, and approved by the Government Accountability Board on April 29, 2015.

The emergency rule, EmR1515, was approved by the Governor on May 12, 2015. EmR1515 was effective on May 15, 2015, upon publication in the *Wisconsin State Journal*. EmR1515 was published in Register No. 713A3 on May 18, 2015.

ANALYSIS BY THE GOVERNMENT ACCOUNTABILITY BOARD

Statutes interpreted:

WIS. STAT. §§5.02(6m), 5.02(16c), 6.15(2)(bm), 6.79(2) and 39.30(1)(d).

Statutory authority:

WIS. STAT. §§5.05(1), 5.05(6a), 227.10(1) and 227.26(2).

Explanation of agency authority:

WIS. STAT. §5.05(1) provides that the Government Accountability Board (“G.A.B.” or “Board”) has “the responsibility for the administration of chs. 5 to 12, other laws relating to elections and election campaigns, subch. III of ch. 13, and subch. III of ch. 19.” The G.A.B. may “[p]romulgate rules under ch. 227 applicable to all jurisdictions for the purpose of interpreting or implementing the laws regulating the conduct of elections . . . or ensuring their proper administration.” WIS. STAT. §5.05(1)(f).

The photo identification requirement is found in chapters 5 and 6 of the Wisconsin Statutes. *See* 2011 Wisconsin Act 23. The G.A.B. has the statutory authority to promulgate emergency rules to ensure the proper administration of elections.

On November 15, 2011, the Joint Committee for Review of Administrative Rules (“JCRAR”) ordered the G.A.B., pursuant to WIS. STAT. §§227.10(1) and 227.26(2), to promulgate an emergency rule to allow for the use of technical college system student identification cards to meet the photo identification requirements of 2011 Wisconsin Act 23, which was enacted on May 25, 2011. The G.A.B. could not comply with JCRAR’s order until the U.S. Supreme Court denied certiorari on the judicial challenges to the photo identification requirements. The G.A.B. may now comply with JCRAR’s order.

Related statute or rule:

Wis. STAT. §§5.02(6m), 5.02(16c), 6.15(2)(bm), 6.79(2)

Plain language analysis:

2011 Wisconsin Act 23 created the requirement that electors present an acceptable form of photo identification as a condition of obtaining a ballot. 2011 Wisconsin Act 23 also created the list of documents that qualify as identification for purposes of voting, including a student identification card issued by an accredited educational institution which meets certain criteria. These rules clarify that an identification card issued by an institution in the Wisconsin Technical College System is an acceptable form of photo identification for voting if the card is unexpired or remains unexpired for no more than 2 years, and contains the date of issuance and the student's signature and photo. These conditions are identical to the requirements for acceptable photo identification cards issued by other accredited educational institutions.

Summary of, and comparison with, existing or proposed federal regulation:

The 2002 federal Help America Vote Act (HAVA), 52 USC §15301 et seq., contains a provision requiring states to receive identification from individuals who register to vote for the first time, by mail. HAVA §303 (b)(2)(A)(i)(I). The HAVA requirement relates to voter registration. The State photo identification requirement relates to receiving a ballot. The federal requirement simply refers to "current and valid photo identification." The federal requirement does not describe specific types of acceptable photo identification.

There is currently ongoing litigation involving 2011 Wisconsin Act 23, but such litigation does not impact the substance of the proposed rules. *See Frank v. Walker*, Civil Action No. 2:11-cv-01128 (LA) (E.D. Wis.).

Comparison with rules in adjacent states:

Illinois: Illinois does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Iowa: Iowa does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Michigan: Michigan requires voters to present photo identification to receive a ballot and vote, but voters may also sign an affidavit attesting that the voter is not in possession of photo identification. Michigan permits voters to use student identification from either a high school or an accredited institution of higher education to present at the polls to receive a ballot. Michigan's community college system is accredited, and students in those colleges may use their college photo identification cards for voting purposes.

Minnesota: Minnesota does not require voters to present photo identification to receive a ballot if the voter is already registered to vote.

Summary of factual data and analytical methodologies:

At its meeting on November 9, 2011, the Board determined that a Wisconsin Technical College System institution is accredited under WIS. STAT. §39.30 (1)(d), and therefore, an elector may use an identification card issued by such an institution for voting purposes if the card also meets the requirements of WIS. STAT. §5.02(6m). The Board made this determination with advice from G.A.B. staff regarding the accepted rules of statutory interpretation, starting with the plain language of the statute. WIS. STAT. §39.30 (1)(d) defines an “accredited” institution as an “institution accredited by a nationally recognized accrediting agency . . . or, if not so accredited, is a nonprofit institution of higher education whose credits are accepted on transfer by not less than 3 institutions which are so accredited, on the same basis as if transferred from an institution so accredited.” The Board also considered information regarding the legislative history of 2011 Wisconsin Act 23. The Board did not consider potential public policy reasons when determining whether applicable statutes permitted the use of Wisconsin Technical College System student identification cards for voting purposes.

Analysis and support documents used to determine effect on small business or in preparation of economic impact analysis:

The Board anticipates that this rule will have minimal or no economic or fiscal impact on specific business, business sectors, public utility rate payers, or the State’s economy as a whole because the rule does not impose any requirements, fiscal or otherwise, on businesses or with regard to public utility rates.

Fiscal estimate:

The Board finds that this rule will have minimal or no fiscal impact. The rule does not impose any requirements on Wisconsin Technical College System institutions that may issue identification cards to students. The rule only clarifies that Wisconsin Technical College System students may use their identification cards for voting purposes if those cards meet the photo identification requirements in WIS. STAT. §5.02(6m).

Effect on small business:

The Board finds that the rule will have no economic impact on small businesses, as that term is defined in WIS. STAT. §227.114(1).

Agency contact person:

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Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax, or email to the contact named above, no later than June 29, 2015.

Written comments may also be submitted to the Board using the Wisconsin Administrative Rules website at <http://adminrules.wisconsin.gov>.

How to obtain a copy of the rules:

A copy of the full rule, including the analysis, fiscal estimate, and economic impact analysis, may be obtained from the G.A.B. at no charge. Requests for such copies may be made to the contact named above.

TEXT OF PROPOSED RULE

SECTION 1: GAB 10.01 is created to read:

GAB 10.01 **Definitions.** In this chapter:

(1) “Student identification card” means a document or card that:

- (a) Is unexpired;
- (b) Contains the date of issuance;
- (c) Contains the signature of the student to whom it is issued;
- (d) Contains a photograph that reasonably resembles the student to whom it is issued;
- (e) Contains an expiration date indicating that the card expires no later than 2 years after the date of issuance; and
- (f) Is issued to a student who establishes that the student is enrolled at the college that issued the card on the date that the card is presented.

(2) “Technical college” means a college that is a member of and governed by the Wisconsin Technical College System.

SECTION 2: GAB 10.02 is created to read:

GAB 10.02. **Wisconsin Technical College System student identification cards for voting.** A student identification card issued by a technical college is an acceptable form of identification under s. 5.02(6m)(f), Wis. Stat., and may be presented by an elector obtaining a ballot pursuant to ss. 6.15(2)(bm), 6.15(3), 6.18, 6.79(2), 6.82, 6.86(1), 6.86(2), 6.87, 6.875(6), and 6.97, Wis. Stat.

SECTION 3: Effective date.

In accordance with s. 227.22(2), GAB §§10.01 and 10.02 shall take effect on the first day of the month commencing after the date on which the rules are published in the code as required under s. 35.93(2)(c)1.

SECTION 4: Chapter title.

GAB Chapter 10 of the Wisconsin Administrative Code is created and entitled: “Voter Identification.”