

# Clearinghouse Rule 99-137

## CERTIFICATE


State of Wisconsin )  
)  
Elections Board )

I, Kevin J. Kennedy, Executive Director of the State Elections Board and custodian of the official records of the agency, do hereby certify that the annexed rule, EIBd ch.7 relating to approval of electronic voting equipment, was duly created by this Board on September 29, 1999.

I further certify that this copy has been compared by me with the original on file in this office and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the State Elections Board at 132 East Wilson Street, in the City of Madison, on April 26, 2000.



  
Kevin J. Kennedy  
Executive Director



## ORDER OF STATE ELECTIONS BOARD

To create EIBd ch. 7 relating to approval of electronic voting equipment.

### ANALYSIS:

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 all of the following:

(a) A signed agreement that the vendor shall pay all costs, related to approval of the system, incurred by the board, its designees and the vendor.

- (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 (NASED) demonstrating that the voting system conforms to all the standards recommended by the Federal Elections Commission.
  - (f) A signed agreement requiring that the vendor shall immediately notify the board of any modification to the voting system and requiring that the vendor will not offer, for use, sale or lease, any modified voting system, if the board notifies the vendor that the modifications require that the system be approved again.
  - (g) A list showing all the states and municipalities in which the system has been approved for use and the length of time that the equipment has been in use in those jurisdictions.
- (2) The board shall determine if the application is complete and, if it is, shall so notify the vendor in writing. If it is not complete, the board shall so notify the vendor and shall detail 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**

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

(3) 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. As a condition of maintaining the board's approval for the use of the voting system, the vendor shall inform the board of all changes in the hardware, firmware and software and all jurisdictions using the voting system.

(2) The vendor shall, at its own expense, furnish, to an agent approved by the board, for placement in escrow, a copy of the programs, documentation and source code used for any election in the state.

(3) 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.

(4) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the board.

(5) For good cause shown, the board may exempt any electronic voting system from strict compliance with ELBD ch.7.

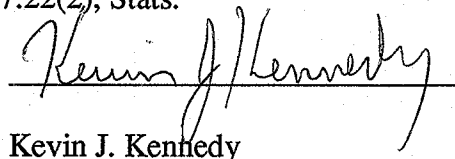
**INITIAL REGULATORY FLEXIBILITY ANALYSIS:**

The creation of this rule does not affect business.

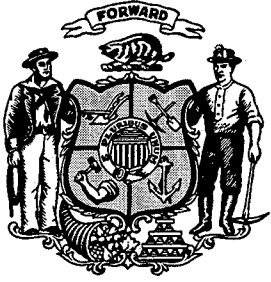
**FISCAL ESTIMATE:**

The creation of this rule has no fiscal effect.

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

  
Kevin J. Kennedy

# State of Wisconsin \ Elections Board

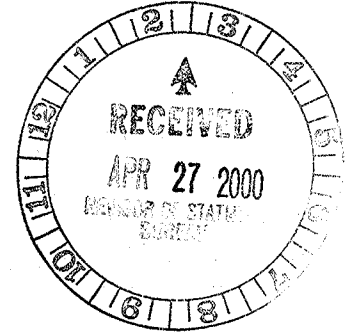


**Kevin J. Kennedy**  
Executive Director

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April 26, 2000

Gary Poulson  
Deputy Revisor  
Revisor of Statutes Bureau  
131 W. Wilson St., Room 800  
Madison, WI 53703-3233



Re: Administrative Rules of the State Elections Board

Dear Mr. Poulson:

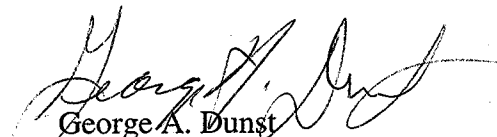
This letter is to inform you of the status of the creation and promulgation of Elections Board rules EIBd. Ch.7, contained in Clearinghouse Rule 99-137. EIBd. Ch.7 was promulgated pursuant to the 30-day notice procedure.

No petition under ch. 227, Stats., was filed with the Board within 30 days to request a public hearing on the proposed action regarding any of these rules. The legislative council reviewed and commented about each rule and those comments are reflected in the rules. Per our November 30, 1999 notice to you, these rules were submitted to the presiding officer of each house of the legislature on November 30, 1999. Each rule was reported out of committee with no action taken.

The Board, through its Executive Director, Kevin J. Kennedy, has ordered the appropriate action on these rules. The original and a copy of the Board's orders for each rule are enclosed.

Please publish these at your earliest convenience to become effective according to their terms.

**STATE ELECTIONS BOARD**

  
George A. Dunst  
Legal Counsel

GAD/rjd