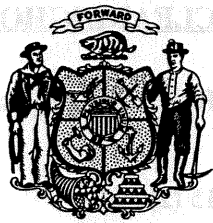


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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-153

AN ORDER to repeal EIBd 2.05 (15); to renumber EIBd 2.05 (16), (17) and (18); to amend EIBd 2.05 (2), (14) and (16) (b) and 2.07 (2) (a) and (b); and to create EIBd 2.05 (16) (f), relating to sufficiency of nomination papers.

Submitted by **ELECTIONS BOARD**

11-01-00 RECEIVED BY LEGISLATIVE COUNCIL.
11-17-00 REPORT SENT TO AGENCY.

RS:RJC;jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

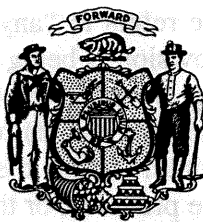
NO

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CLEARINGHOUSE RULE 00-153

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In SECTION 1 of the rule, the title to s. EIBd 2.05 should not be reproduced in the rule.
- b. In SECTION 2 of the rule, the administrative code section number should precede the creation of par. (f). In addition, because par. (f) is being created by the rule, it need not be underscored. Finally, it is not clear that s. EIBd 2.05 (16) (f) is appropriately placed in sub. (16). The introductory provision to sub. (16) provides that: "An individual's signature on a nomination paper may not be counted when any of the following occur:". Paragraph (f) as created by the rule relates to correcting or rehabilitating nomination papers. It appears to be an exception to the introductory provision of sub. (16). Accordingly, it may be more appropriate to renumber sub. (16) (intro.) as sub. (16) (a), renumber pars. (a) to (e) as subs. 1. to 5. and rewrite par. (f) as a new par. (b).
- c. Rule sections are to be treated in sequential order. Therefore, the repeal of s. EIBd 2.05 (15) should precede, in a separate SECTION, the treatment of s. EIBd 2.05 (16).
- d. In SECTION 4 of the rule, the title to s. EIBd 2.07 need not be shown. In addition, the (2) before par. (b) need not be shown. Finally, at the beginning of the text, the notation "EIBd 2.07" should precede (2) (a).

4. Adequacy of References to Related Statutes, Rules and Forms

In s. ElBd 2.05 (16) (f), the rule refers to “any other rule.” Can the rule be made any more specific in terms of which rule provision is being referred to? For example, could the rule be rewritten to provide “notwithstanding any other provision of this chapter”? The rule should be clarified. In addition, the final sentence of par. (f) refers to the “due date for the nomination papers being corrected.” When is that date? Is this the time period referred to in s. ElBd 2.07? An appropriate cross-reference should be provided, or the rule should be otherwise clarified.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the analysis to the rule, the rule is described as though the rule has already gone into effect. For example, the analysis provides that “nomination papers now are required to be numbered.” In order to provide more clarity to the analysis, this sentence and similar sentences should be rewritten to provide that “the rule proposes to . . .” Without such a change, it is not clear what the effect of the rule is vis ‘a vis the current rule.

b. In s. ElBd 2.05 (16) (f), the phrase “nomination paper errors in information” is awkward. To improve the clarity of that phrase, might the phrase be rewritten substantially as follows: “errors in information contained in nomination papers”? Also, in the second sentence, both occurrences of the word “must” should be replaced by the word “shall.”

c. Current s. ElBd 2.07 (2) (a) requires that service of a complaint challenging nomination papers must comply with the requirements of ch. ElBd 10. The rule deletes this requirement but yet provides that the complaint must be delivered to the respondent within 24 hours of the complaint being filed with the filing officer. What is meant by “delivered”? Is a postmark sufficient? Must the delivery be made personally to the respondent? The rule should be clarified.

d. In s. ElBd 2.07 (2) (b), the current rule contains a comma after the word “challenged.” That comma is missing in the rule. If the comma is to be deleted, it should be shown as stricken. However, it is not clear that that comma and the comma after the word “filed” are necessary.

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.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., and according to the procedure set forth in s.227.16(2)(e), Stats., the State of Wisconsin Elections Board will adopt the following rules 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:

Statutory authority: ss.5.05(1)(f) and 227.11(2)(a)

182 159, 182 182 6, 33, 186

Statutes interpreted: 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

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The rule prescribes the standards for filing officers to determine whether nomination papers comply with the requirements of ch. 8 of the Wisconsin Statutes and provides 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 having changed the circulator's affidavit to a circulator's certificate. Nomination papers now are required to be numbered. Also, nomination paper errors that can be corrected must be corrected within three days of the filing of the nomination paper being corrected. Challenge complainants are now required to deliver a copy of their challenge complaint within 24 hours of their challenge and both challenge complainants and respondents are given three calendar days, not business days, in which to file their pleadings.

(5) Am. rule

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 amends EIBd 2.05(2) and 2.07(2)(a) and (b) and creates Rule EIBd 2.05(16)(f), interpreting 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., as follows:

SECTION 1. EIBd 2.05(2), (14) and (16)(b) are amended to read:

ELBD 2.05 TREATMENT AND SUFFICIENCY OF NOMINATION PAPERS

(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".

(2) Don't merge the title

(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.

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

SECTION 2. EIBd 2.05(16)(f) is created to read:

(f) Notwithstanding any other rule, nomination paper errors in information supplied 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 must have personal knowledge of the correct information and the correcting affidavit must be filed with the filing officer not later than three days after the due date for the nomination papers being corrected.

No information since it is being created

can you be more specific

answer information contained in nomination paper

SECTION 3. 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)

re-numbered

Does this really belong in (16)?

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

EIBD 2.07 CHALLENGES TO NOMINATION PAPERS.

(2)(a) Any challenge to the sufficiency of a nomination paper shall be made by verified complaint, filed with the appropriate filing officer. A copy of the complaint shall be delivered to the respondent within 24 hours of the complaint being filed with the filing officer. 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.

used to be... had to... what? 5

(2)(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.

5 commonly original - name may be

NOTICE OF PROPOSED RULE

October 30, 2000

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INITIAL REGULATORY FLEXIBILITY ANALYSIS:

The creation of this rule does not affect business.

FISCAL ESTIMATE:

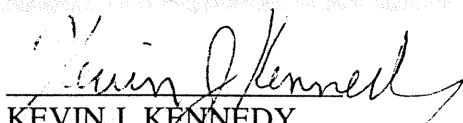
The creation of this rule has no fiscal effect.

CONTACT PERSON:

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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 October 30, 2000



KEVIN J. KENNEDY
Executive Director