

☞ **07hr_CRule_06-137_SC-LEUA_pt01**



Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Labor, Elections and Urban Affairs (SC-LEUA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Labor, Elections and Urban Affairs

Clearinghouse Rule 06-137

Relating to voting by provisional ballot for election day registrants.
Submitted by Elections Board.

May 31, 2007 Referred to Committee on Labor, Elections and Urban Affairs.

July 24, 2007 **PUBLIC HEARING HELD**

Present: (3) Senators Coggs, Wirch and Grothman.
Absent: (2) Senators Lehman and A. Lasee.

Appearances For

- None.

Appearances Against

- None.

Appearances for Information Only

- Kevin Kennedy — Executive Director , Wisconsin State Elections Board

Registrations For

- None.

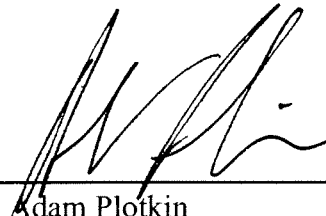
Registrations Against

- None.

Registrations for Information Only

- None.

July 30, 2007 No action taken.



Adam Plotkin
Committee Clerk



Hearing on CR 06-137

Election Day Voter Registration

Current Rule

- If registering on Election Day, a voter can fill in either their current, valid Wisconsin Driver's License number, their state issued ID number, or the last four digits of their Social Security number.

Reason for change

- The federal Help American's Vote Act of 2002 requires a current and valid driver's license number to register on Election Day at the poll.
- The Elections Board must change current practice to be HAVA compliant.
- The proposed change has been approved by the U.S. Department of Justice

Proposed new rule

- If the same day registrant has a current and valid Wisconsin driver's license, they must provide the number when registering. If they can't they will now be allowed to vote provisionally.
- If they do not have a current and valid Wisconsin driver's license, then they can still provide the number of a valid state issued ID or the last four digits of their social security number.

Possible questions

- Do you have estimate on how many voters this might affect?
- Describe the process for provisional voting.
- What happens if we don't make this change for the state to be HAVA compliant?

Hearing on CR 06-137 Election Day Voter Registration

Current Rule

- If registering on Election Day, a voter can fill in either their current, valid Wisconsin Driver's License number, their state issued ID number, or the last four digits of their Social Security number.

Reason for change

- The federal Help American's Vote Act of 2002 requires a current and valid driver's license number to register on Election Day at the poll.
- The Elections Board must change current practice to be HAVA compliant.
- The proposed change has been approved by the U.S. Department of Justice

Proposed new rule

- If the same day registrant has a current and valid Wisconsin driver's license, they must provide the number when registering. If they can't they will now be allowed to vote provisionally.
- If they do not have a current and valid Wisconsin driver's license, then they can still provide the number of a valid state issued ID or the last four digits of their social security number.

Possible questions

- 3 • Do you have estimate on how many voters this might affect?
- 2 • Describe the process for provisional voting.
- 1 • What happens if we don't make this change for the state to be HAVA compliant? *small*

Registers

- Wis should be handed
1976 - provisional

- currently

2006

271 - prov. ballots

168 - gave info - counted

challenged
ballot - Not
timeframe on
ballot

2004

why so high?

17% of votes
same day reg.





**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 06-137

AN ORDER to create EIBd 3.04, relating to voting by provisional ballot for election day registrants.

Submitted by **ELECTIONS BOARD**

12-21-2006 RECEIVED BY LEGISLATIVE COUNCIL.

01-22-2007 REPORT SENT TO AGENCY.

RS:RW

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



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 06-137

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 January 2005.]

2. Form, Style and Placement in Administrative Code

The list of statutes interpreted includes s. 5.02 (6m), Stats. Such a provision does not appear to exist.

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

a. Since s. 6.97, Stats., has been amended by 2005 Act 451 to apply to “proof of residence” rather than to identification, the board may wish to clarify the rule to reflect the use of that statute. One approach would be to replace the phrase in s. ELBd 3.04 (2) referring to s. 6.97, Stats., with “...the applicant will be allowed to vote a provisional ballot using the procedures set forth in s. 6.97, Stats.”

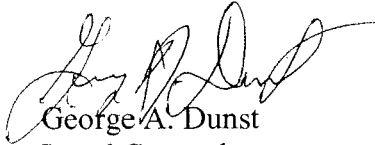
b. For clarity purposes, the board should consider replacing the word “will” with “shall” in the second and last sentences of s. ELBD 3.04 (2), if the actions are mandatory.

NOTICE

This notice is to inform you that the proposed rulemaking of the State Elections Board, appearing in Clearinghouse Rule 06-137, creating EIBd.3.04, 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 May 30, 2007

STATE ELECTIONS BOARD



George A. Dunst
Legal Counsel

REPORT
OF
STATE ELECTIONS BOARD

Clearinghouse Rule 06-137
Rules Section ElBd. 3.04
Wisconsin Administrative Code

The State of Wisconsin Elections Board proposes an order to create ElBd 3.04, relating to election-day voter registration.

ANALYSIS PREPARED BY STATE ELECTIONS BOARD:

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

2. Statutes interpreted: ss.5.02(6m), (14), (17), 6.27, 6.29, 6.33, 6.34, 6.36, 6.40, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.97, Stats.

3. Explanation of agency authority: In 2002, Congress enacted the Help America Vote Act to address problems and issues that surfaced in the 2000 presidential election. Section 303(a)(5)(A)(i) of the Act provided that “an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver’s license, the applicant’s driver’s license number.” To comply with federal law, but also to avoid disenfranchising those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver’s license but do not provide that number on their registration form, the Board has adopted ElBd s.3.04, providing for the issuance of a provisional ballot to those registrants, pursuant to s.6.97, Stats. Under that statute, the provisional ballot will be counted if the registrant casting a provisional ballot provides his or her driver’s license number to the clerk of the municipality in which the registrant has voted, not later than 4:00 p.m., on the day following the election.

Previously, the Board’s policy had been to process the election-day registration of those registrants who failed to list their driver’s license number on their registration application, if they had provided, on their registration form, a Wisconsin-issued Identification Card Number or the last four digits of their Social Security Number. Whether that policy complied with federal law had been in issue. To assure that Wisconsin’s practice complies with federal law, the

Elections Board proposes to promulgate the following rule providing for the issuance of a provisional ballot to those Wisconsin election day registrants who have been issued a current and valid Wisconsin driver's license but do not provide that license number on their registration form. This rule is consistent with both federal and state law and has been approved by the U. S. Department of Justice.

4. Related statute(s) or rule(s): Subchapter II of Chapter 6, Stats. and EIBd chapter 3, Wis. Adm. Code, Voter Registration

5. Plain language analysis: The proposed rule provides the method by which persons who are not registered and who do not provide their driver's license number, for whatever reason, may register and vote on election-day.

6. Summary of, and comparison with, existing or proposed federal regulations: The rule is consistent with Section 303(a)(5)(A)(i) of the Help America Vote Act, which provides that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number."

7. Comparison with rules in adjacent states: The rule is consistent with the requirements in Illinois, Iowa, Michigan and Minnesota, similar to those in federal law, that "an application for voter registration for an election for Federal office may not be accepted or processed by a state unless the application includes – in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number."

8. 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.

9. Explanations of modifications to the proposed rule:

The State Elections Board makes no substantive modifications to this rule.

10. 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.

11. Conclusion and recommended action:


The State Elections Board unanimously concludes that El.Bd 3.04 should be created. The creation of this rule is necessary to facilitate and ensure full compliance with the voter registration requirements of the Help America Vote Act while avoiding the disenfranchisement of Wisconsin electors

The Board recommends promulgation of this rule.

Respectfully submitted,

May 30, 2007

STATE ELECTIONS BOARD



George A. Dunst, Legal Counsel

WISCONSIN ADMINISTRATIVE CODE

STATE ELECTIONS BOARD

SECTION 1. EIBd 3.04 is created to read:

ELBD 3.04 Requiring provision of certain information by election-day voter registration applicants. (1) A qualified elector registering to vote at a polling place on election day, who has been issued a current and valid Wisconsin driver's license, shall list his or her Wisconsin driver's license number on the voter registration application before the registration may be accepted or processed and before the person is allowed to vote at any election in Wisconsin. A Wisconsin driver's license that has expired, or has been suspended or revoked, is not a current and valid driver's license.

(2) If a current and valid Wisconsin driver's license has been issued to the registration applicant, but the registration applicant does not list the driver's license number on the registration application, the applicant shall be allowed to vote a provisional ballot using the procedures set forth in s. 6.97, Stats. Individuals voting provisional ballots shall be given the written information required under s.6.97(1), Stats. If the person voting a provisional ballot provides his or her driver's license number to the municipal clerk, by any means feasible, including, but not limited to: in person, email, facsimile or telephone; not later than 4:00 p.m., on the day following the day of the election, the person's ballot shall be counted.

(3) If a current and valid Wisconsin driver's license has not been issued to the applicant, the applicant shall list on the registration application either the last four digits of the applicant's social security number, or the Wisconsin department of transportation identification card number if one has been issued to the applicant. If neither a driver's license nor a social security number has been issued to the applicant, and the applicant has not been issued a Wisconsin department of transportation identification card number, the applicant shall check the appropriate box on the application before the application may be accepted or processed and the registrant is allowed to vote.

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 W. 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 30, 2007,



KEVIN J. KENNEDY
Executive Director