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CLEARINGHOUSE RULE 98–051

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 October 1994.]

1. Statutory Authority

a. As of the date of submission of this rule to the Clearinghouse, the statutes interpreted (i.e., statutes affected by 1997 Assembly Bill 150, as passed by the Legislature) had not been signed into law by the Governor. Thus, the rule revision and its submission to the Clearinghouse is premature. However, comments are provided to assist the agency and expedite the process, based on the assumption that the legislation will be signed into law.

b. The enabling legislation for this rule, 1997 Assembly Bill 150, includes an initial applicability provision stating that the Act first applies with respect to campaign finance reports that are required to be filed after June 30, 1999. Section ElBd 6.05 (2) uses the phrase "Beginning with any campaign finance report filed on or after January 1, 1999." This phrase should be revised to comport with the initial applicability provision of Assembly Bill 150.

2. Form, Style and Placement in Administrative Code

a. Consistent with the suggestion in the Manual, the proposed definitions of "contributions" and "registrant," which cross-reference statutory definitions, should use the connecting phrase "given in" rather than "as provided in." Also, in s. ElBd 6.05 (1) (intro.), the phrase "Definitions: as used in this rule:" should be replaced by the phrase "In this section:".

b. The definition of "campaign period" in the rule is a restatement of the definition of "campaign period" in s. 11.21 (16), Stats. Consistent with the treatment of the definitions of

"contribution" and "registrant," "campaign period" should be defined as having ". . . the meaning given in s. 11.21 (16), Stats." The advantage of cross-referencing a statutorily defined term is that it may not be necessary to revise the rule should a change be made in the statutory definition.

c. Neither the definition of "electronic format" nor the substantive provisions of the rule are responsive to s. 11.21 (16), Stats., which requires the Elections Board to "specify, by rule, a type of software that is suitable for compliance with the electronic filing requirement under this subsection." Although a definition of "electronic format" may be useful, it is not an adequate substitute for a substantive rule provision specifying the type of software that is suitable.

d. In s. ElBd 6.05 (1) (f), both occurrences of the word "and" should be replaced by the word "or."

e. In s. ElBd 6.05 (2), it appears that the phrase "campaign finance report that is required to be filed by ch. 11, Stats.," should be replaced by the defined term "report." See also the use of the phrase "campaign finance report" in subs. (3) and (4).

f. Section ElBd 6.05 (5) deals with the authority of a registrant to use its own software to file electronically. This provision should be restated to more clearly express the concept that a registrant must use a type of software specified as approved by the Elections Board unless the board specifically authorizes the use of other software submitted by a registrant to the board for testing. Although this result is obviously intended by sub. (5), this provision does not clearly express the concept that only approved software may be used, unless the board evaluates and determines that software not previously specified as approved by the board is capable of generating data in a format suitable to the board. Finally, the word "must" should be replaced by the word "shall."

g. A review of the arrangement of subsections of the rule leads to the conclusion that s. ElBd 6.05 (6), relating to filing of a paper copy of the report filed electronically, is out of place. A more logical placement would be after subs. (2) and (3), relating to the requirement and authority to file a campaign finance report in an electronic format.