

STATE BOARD OF ELECTIONS

NOTICE OF PROPOSED AMENDMENTS

NOTE: The following proposed rulemaking was published in the *Illinois Register* on July 10, 2009 - Volume 33, Issue 28 beginning on page 9597.

- 1) Heading of the Part: Campaign Financing
- 2) Code Citation: 26 Ill. Adm. Code 100
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
100.180	New
100.185	New
- 4) Statutory Authority: Implements 5/9-35 of the Election Code [10 ILCS 5/9-35] and authorized by Section 9-35(h) of the Election Code [10 ILCS 5/9-35(h)]
- 5) A Complete Description of the Subjects and Issues Involved: **Pursuant to Public Act 95-971, effective January 1, 2009, this rulemaking establishes procedures to be used by business entities whose existing State contracts, or whose bids or proposals on State contracts exceed \$50,000, to electronically register with the SBEL. Such entities will receive electronically a certificate of registration. This rulemaking also sets forth the situations in which the SBEL must assess civil penalties against such entities, such as failure to update a registration, failure to submit the certificate of registration to such business' affiliated persons/entities, failure to disclose required information on their registrations, etc.).**
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? Yes
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or expand a State mandate on local government.

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- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking:

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- 13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Any business who has an existing state contract or a bid/proposal for the same in excess of \$50,000 will be impacted.
- B) Reporting, bookkeeping or other procedures required for compliance: Extensive knowledge of the internal structure of one's business entity is necessary for accurate and timely reporting.
- C) Types of Professional skills necessary for compliance: Because of the electronic registration requirement some IT skills will be necessary.

- 14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: At the time that the regulatory agenda submission was due, Public Act 95-971 was not in effect.

The full text of the Proposed Amendments begins on the next page:

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TITLE 26: ELECTIONS

CHAPTER I: STATE BOARD OF ELECTIONS

PART 100

CAMPAIGN FINANCING

Section	
100.10	Definitions
100.20	Official Forms
100.30	Forwarding of Documents (Repealed)
100.40	Vacancies in Office – Custody of Records
100.50	Multiple Filings by State and Local Committees
100.60	Filing Option for a Federal Political Committee
100.70	Reports of Contributions and Expenditures
100.80	Report Forms
100.90	Provision Circumvention
100.100	Proof of Identification; Application for Inspection and Copying (Repealed)
100.110	Loans by One Political Committee to Another
100.120	Receipt of Campaign Contributions
100.125	Receipt by Mail of Pre-Election and Semiannual Reports of Campaign Contributions and Expenditures
100.130	Reporting by Certain Nonprofit Organizations
100.140	Prohibited Contributions – State Property
100.150	Electronic Filing of Reports
100.160	Good Faith
100.170	Sponsoring Entity
<u>100.180</u>	<u>Business Entity Registration Procedures</u>
<u>100.185</u>	<u>Assessment of Civil Penalties</u>

AUTHORITY: Implementing Article 9 of the Election Code [10 ILCS 5/Art. 9] and authorized by Section 9-15(3) of the Election Code [10 ILCS 5/9-15(3)].

SOURCE: Amended at 5 Ill. Reg. 1337, effective January 30, 1981; amended at 5 Ill. Reg. 12115, effective October 26, 1981; codified at 6 Ill. Reg. 7211; amended at 7 Ill. Reg. 225, effective December 16, 1982; amended at 14 Ill. Reg. 10824, effective June 22, 1990; amended at 16 Ill. Reg. 6982, effective April 21, 1992; amended at 18 Ill. Reg. 14707, effective September 9, 1994; amended at 21 Ill. Reg. 10044, effective July 21, 1997; emergency amendment at 23 Ill. Reg. 719, effective January 4, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 6796, effective May 24, 1999; emergency amendment at 24 Ill. Reg. 13039, effective August 9, 2000, for a maximum of 150 days; emergency expired January 5, 2001; amended at 24 Ill. Reg. 14214,

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effective September 11, 2000; amended at 29 Ill. Reg. 18785, effective November 7, 2005; amended at 30 Ill. Reg. 10261, effective June 1, 2006; amended at 30 Ill. Reg. 17496, effective November 3, 2006; amended at 31 Ill. Reg. 7142, effective May 1, 2007; emergency amendment at 33 Ill. Reg. 332, effective January 1, 2009, for a maximum of 150 days; emergency expired May 30, 2009; emergency amendment at 33 Ill. Reg. 9809, effective June 29, 2009, for a maximum of 150 days; amended at 33 Ill. Reg. _____, effective _____.

Section 100.180 Business Entity Registration Procedures

- a) This Section and Section 100.185 are adopted to comply with Public Act 95-971. Any business entity whose existing State contracts, whose bids and proposals on State contracts or whose bids and proposals on State contracts combined with the business entity's existing State contracts in aggregate annually total more than \$50,000 shall register with SBEL in accordance with Section 9-35 of the Election Code [10 ILCS 5/9-35]. Those business entities that wish to submit a bid or proposal on a State contract must register with SBEL prior to submitting their bid or proposal. SBEL will provide a certificate of registration upon successful completion of the registration process.
- b) Definitions
 - 1) For purposes of this Section, the terms "business entity", "contract", "State contract", "contract with a State agency", "State agency", "affiliated entity", "affiliated person", and "executive employee" shall have the meanings ascribed to those terms in Section 50-37 of the Illinois Procurement Code [30 ILCS 500/50-37] (Procurement Code).
 - 2) The term "annually", as used in Section 20-160 of the Procurement Code, when referring to the aggregation of State contracts, shall mean the calendar year in which the contracts are bid on or awarded.
 - 3) Unless otherwise indicated, any time frame involving a certain number of days shall refer to business days. Business days shall be those days in which the office of SBEL is open to the public for a minimum of 7 hours.
 - 4) The term "political committee" shall mean any political committee required to file as such under the provisions of Article 9 of the Election Code (campaign disclosure law), regardless of whether the committee has filed a Statement of Organization pursuant to Section 9-3 of the Election Code.

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- 5) The term "minor children" shall mean any children of an affiliated person who has not attained the age of 18 years of age as of the time of registration of the business entity with which the person is affiliated. The term shall include adopted children of the affiliated person but shall not include stepchildren.

- c) Upon the establishment of a fully functional and statutorily compliant electronic registration system, business entities will be required to submit their registration forms electronically consistent with Section 9-35 of the Election Code. Within 60 days after the establishment of the electronic system, all business entities that have submitted their registrations via e-mail attachment or on paper shall re-submit their registration electronically. SBEL will send notice to all such entities informing them that the electronic system has been established and setting a date on which the 60 day period is to begin. This re-registration requirement shall also affect any business entity that had previously registered with SBEL, but that is no longer required to be registered. At the time of re-submission, SBEL shall provide to the business entity an electronic certificate of registration.

- d) Business entities shall register on a secure website provided by SBEL by first creating an on-line account. SBEL will verify the authenticity of that account at the time of registration.

- e) Registration Procedures
 - 1) The following information must be supplied at the time of registration:
 - A) The name and address of the business entity. The address shall be the office designated by the entity as its principal office or its headquarters.

 - B) The name and address of each affiliated entity of the business entity, including a description of the affiliation. The address shall be that of the principal office or headquarters of the affiliated entity.

 - C) The name and address of each affiliated person of the business entity, including a description of the affiliation. At least one affiliated person is required to be listed on the registration. The name and address of any minor children who must be disclosed on

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the business entity's registration by virtue of the fact that those persons fall under the definition of affiliated person shall not be posted on the SBEL website.

- D) The Federal Employer Identification Number (FEIN), if the business has obtained such a number. If the business does not have a FEIN, an Illinois Business Tax Number (IBT) must be provided. If the business has neither of these numbers, it must provide an identifying number unique to that business that is capable of verification by SBEL. A sole proprietorship may use a social security number as a unique identifier if it does not have a FEIN or an IBT.
- 2) Registration shall be accomplished in one of the two following methods:
- A) A web-based program through which information may be entered, saved and transmitted upon completion. Changes may be made by accessing the program, making the changes, and submitting those changes to SBEL via the program contained on SBEL's website.
- B) A format, provided by SBEL, designed specifically for large business entities through which data may be submitted in lieu of completion of the web-based option. Though this method is geared toward larger business entities, any business entity may choose to use this method.
- f) The Board shall provide a certificate of registration to the business entity upon registration and upon any change of information submitted by the entity. The certificate shall be electronic and accessible to the business entity through the SBEL website and shall be password protected.
- 1) Any business entity required to register under Section 20-160 of the Procurement Code shall provide a copy of the registration certificate, by first class mail, e-mail or hand delivery within 10 days after registration, to each affiliated entity and each affiliated person whose identity is required to be disclosed.
- 2) Any business entity required to register under Section 20-160 of the Procurement Code shall provide a copy of the registration certificate, by first class mail, e-mail or hand delivery within 10 days after the addition of

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any affiliated entity or affiliated person whose identity is required to be disclosed, to that affiliated person or entity. The delivery of the registration certificate to a minor child who is an affiliated person shall be accomplished by providing it as described in this Section to either parent (one of whom must be an affiliated person) or the legal guardian of the minor child. The business entity shall document in writing the date of submission of the certificate of registration to the appropriate entities and persons.

- 3) Any business entity required to register under Section 20-160 of the Procurement Code shall notify each political committee to which it makes a contribution, in writing at the time of the contribution, that the business entity is registered with SBEL under Section 20-160. The business entity shall document in writing the date of submission of the certificate of registration to the appropriate political committee.
 - 4) Any affiliated entity or affiliated person of a business entity required to register under Section 20-160 of the Procurement Code shall notify each political committee to which it makes a contribution that it is affiliated with a business entity registered with SBEL under Section 20-160 and the business entity with which it is affiliated. The notification shall be in writing and shall occur at the time the contribution is made to the committee. The affiliated entities or persons shall document in writing the date of submission of the certificate of registration to the appropriate political committee.
 - 5) In the determination of a complaint alleging a failure to comply with any notification requirement contained in this subsection (f), the failure of a party responsible for providing the required notification to submit written documentation of compliance shall create a rebuttable presumption of noncompliance against that party.
- g) Each bid submitted to and every contract executed by the State on or after January 1, 2009 shall contain:
- 1) A certification by the bidder or contractor that either:
 - A) the bidder or contractor is not required to register as a business entity with SBEL pursuant to this Section; or

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- B) the bidder or contractor has registered as a business entity with SBEL and acknowledges a continuing duty to update the registration; and
- 2) A statement that the contract is voidable under Section 50-60 of the Procurement Code as a result of the bidder's or contractor's failure to comply with Section 20-160 of the Procurement Code.
- h) A business entity whose aggregate bids and proposals on State contracts annually total more than \$50,000, or whose aggregate bids and proposals on State contracts combined with the business entity's aggregate annual total value of State contracts exceed \$50,000, has a continuing duty to ensure that the registration is accurate during the period beginning on the date of registration and ending on the day after the contract is awarded. Any change of information, including but not limited to changes in affiliated entities or affiliated persons, must be reported to SBEL within 2 business days following the change (see Section 100.185(a)).
- i) A business entity whose contracts with State agencies, in the aggregate, annually total more than \$50,000 has a continuing duty to ensure that the registration is accurate for the duration of the term of office of the incumbent officeholder awarding the contract or for a period of 2 years following the expiration or termination of the contract, whichever is longer.
- 1) Any change in information, including but not limited to changes in affiliated entities or affiliated persons, shall be reported to SBEL within 10 days following the change (see Section 100.185(a)).
- 2) If a business entity required to register under Section 20-160(d) of the Procurement Code has a pending bid or proposal on a State contract, then any change in information shall be reported to SBEL within 2 business days (see Section 100.185(a)).
- j) A copy of the business entity's certificate of registration must accompany any bid or proposal for a contract with a State agency by a business entity required to register. The chief procurement officer of the State agency shall not accept a bid or proposal unless:
- 1) the certificate of registration is submitted to the agency with the bid or proposal; or

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- 2) a statement that the bidder or contractor is not required to register as a business entity with SBEL is submitted to the agency with the bid or proposal.
- k) A registration, and any changes to a registration, must include the business entity's verification of accuracy.
- l) The requirements of this Section apply regardless of the method of source selection used in awarding the contract.
- m) SBEL will keep and maintain the paper registrations filed in accordance with P.A. 95-1038 and the emergency rules enacted by SBEL in its principal office in Springfield for a period of 6 months following the creation of the electronic registration system. The public may view these paper registration submissions of business entities at SBEL's principal office in Springfield during normal business hours. Copies of registrations of business entities submitted to SBEL shall also be available for public inspection at SBEL's principal office in Springfield. The searchable database provided for in Section 9-35 of the Election Code shall be accessible to the public at all times following its creation.

(Source: Added at 33 Ill. Reg. _____, effective _____)

Section 100.185 Assessment of Civil Penalties

- a) The provisions of Sections 9-20 through 9-24 of the Election Code relating to complaints for violations of Article 9 of the Election Code shall apply to complaints for violations of Section 9-35(d) (failure to notify affiliated persons and entities of a business entity that the business entity is registered with the Board) and Section 9-35(e) (the intentional, willful or material failure to disclose required registration information and failure to update a registration), except that the complaint shall be directed to the registered agent of the business entity or its chief executive officer. In addition, the provision of Section 9-21 pertaining to the 60 day period prior to an election shall not apply to complaints filed under this Section. Willful or intentional failure to disclose material information on a business entity's registration shall subject that entity to a civil penalty assessed by the Board not to exceed \$5,000 per occurrence. If the Board determines that a business entity has intentionally, willfully or materially failed to disclose required information on its registration, it shall refer that determination to the chief procurement officer of the agency or agencies that accepted a bid or entered into a contract with that business. Failure to provide notice under Section 9-35(d) is a

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business offense, the penalty for which shall not to exceed \$1,001.

- b) The provisions of 26 Ill. Adm. Code 125, Subparts A, B and C shall apply to complaints filed against business entities.
- c) Failure to update a registration as required by Section 20-160(d) and (e) of the Procurement Code (any change in information must be reported to SBEL within 2 business days), will result in a \$1,000 per day penalty for each day the information remains unreported. For purposes of this Section, the information required to be updated is the information required of a business entity under Section 9-35(b) of the Election Code, including name and address of the business entity and any affiliated person or entity.
- d) Any penalty assessed against a business entity by SBEL for violation of Section 9-35 of the Election Code shall be paid within 30 days after the assessment of the penalty. The 30 day period shall commence on the date the letter is sent by SBEL to the business entity assessing the penalty. Any assessed penalty that remains unpaid more than 30 days after the issuance of the final order assessing the penalty shall be posted on the SBEL website, indicating the name of the business entity owing the penalty and stating that the penalty remains unpaid.

(Source: Added at 33 Ill. Reg. _____, effective _____)