

WSR 24-17-072
PROPOSED RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION
[Filed August 16, 2024, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-14-037.

Title of Rule and Other Identifying Information: WAC 391-25-070
Contents of petition filing forms, 391-25-110 Supporting evidence—
Showing of interest confidential, and 391-25-400 Card check.

Hearing Location(s): On October 2 and October 23, 2024, at 10:00
a.m., by Zoom <https://perc-wa-gov.zoom.us/j/2679794803>. Public viewing
for both meetings is also available at 112 Henry Street, Suite 300,
Olympia, WA 98504 [98504].

Date of Intended Adoption: November 12, 2024.

Submit Written Comments to: Dario de la Rosa, 112 Henry Street,
Suite 300, Olympia, WA 98504, email dario.delarosa@perc.wa.gov, fax
360-570-7334, beginning September 5, 2024, at 9:00 a.m., by September
27, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Diane Tucker,
phone 360-570-7335, fax 360-570-7334, email diane.tucker@perc.wa.gov,
by September 27, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: In 2024, the Washington state legisla-
ture adopted RCW 41.58.080, which requires the public employment rela-
tions commission (PERC) to adopt rules to allow for the use of elec-
tronic signatures for showing of interest cards. The proposed changes
to chapter 391-25 WAC are necessary to implement the provisions of RCW
41.58.080.

Reasons Supporting Proposal: RCW 41.58.080(4) requires PERC to
adopt rules to implement.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090,
41.58.050, 41.58.080, 41.59.110, 41.76.060, 41.80.080, 47.64.135, and
49.39.060.

Statute Being Implemented: RCW 41.58.080.

Name of Proponent: PERC, governmental.

Name of Agency Personnel Responsible for Drafting: Dario de la
Rosa, 112 Henry Street, Suite 300, Olympia, WA 98504, 360-570-7328;
Implementation and Enforcement: Michael P. Sellars, 112 Henry Street,
Suite 300, Olympia, WA 98504, 360-570-7306.

A school district fiscal impact statement is not required under
RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pro-
posed rule gives adjudicative proceedings before PERC.

This rule proposal, or portions of the proposal, is exempt from
requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicit-
ly and specifically dictated by statute; and rules adopt,
amend, or repeal a procedure, practice, or requirement re-
lating to agency hearings; or a filing or related process
requirement for applying to an agency for a license or per-
mit.

Scope of exemption for rule proposal:

Is fully exempt.

August 16, 2024
Dario de la Rosa

OTS-5767.1

AMENDATORY SECTION (Amending WSR 22-23-101, filed 11/16/22, effective 1/1/23)

WAC 391-25-070 Contents of petition filing forms. Each completed representation petition filing form, whether obtained from the agency's website or through the agency's e-filing system, must include all of the following:

- (1) Information identifying the parties and their representatives (if known), including:
 - (a) The name, email address, mailing address, and telephone number of the employer and of the employer's representative.
 - (b) The name, email address, mailing address, and telephone number of the petitioner and of the petitioner's representative.
 - (c) The name, email address, mailing address, and telephone number of any organization that currently represents the employees involved and of its principal representative.
- (2) Information concerning the parties' relationships, including:
 - (a) The employer department or division involved;
 - (b) The parties' contractual relationship, indicating that:
 - (i) The parties have never had a contract covering the employees involved; or
 - (ii) The parties have had a contract, and a copy of the current or most recent collective bargaining agreement is attached.
- (3) A description of the proposed or existing bargaining unit which the petitioner claims to be appropriate, specifying inclusions and exclusions and the number of employees in the proposed or existing bargaining unit(~~(†)~~).
- (4) A statement consenting to the public employment relations commission's jurisdiction over the public employer and petitioner(~~(† and)~~).
- (5) (~~(The existence of)~~) An indication as to whether any unfair labor practice complaints involving the petitioned-for employees exist.
- (6) A statement that:
 - (a) The petitioner claims to represent a majority of the employees involved and requests certification as exclusive bargaining representative of the bargaining unit;
 - (b) The employees in the bargaining unit desire to change their exclusive bargaining representative and to designate the petitioner as their exclusive bargaining representative; or
 - (c) The employees in the bargaining unit no longer desire to be represented by any employee organization.
- (7) A declaration that attests to the authenticity of the showing of interest submitted under WAC 391-25-110. If submitting showing of interest cards with electronic signatures as authorized by RCW 41.58.080, the declaration must also, at a minimum:
 - (a) Identify the technology used to obtain and verify the signatures on the showing of interest cards;

(b) Provide the methods used to ensure the authenticity of the signatures; and

(c) Confirm that the information transmitted to the signers was the same information to which the signers assented.

(8) Any other relevant facts.

~~((8))~~ (9) The name, signature, and title, if any, of the person filing the petition, as well as the date of the signature.

~~((9))~~ (10) Any other information requested in the representation petition filing form found on the agency's website at www.perc.wa.gov or as required through the agency's e-filing system.

AMENDATORY SECTION (Amending WSR 22-23-101, filed 11/16/22, effective 1/1/23)

WAC 391-25-110 Supporting evidence—Showing of interest confidential. ~~((1))~~ A petition filed by employees or an employee organization must be accompanied by a showing of interest indicating that the petitioner has the support of at least 30 percent of the employees in the bargaining unit which the petitioner claims to be appropriate. The language on the showing of interest card must indicate that the employee signing the card supports the purpose of the petition as described in WAC 391-25-070(6). The showing of interest must be filed under the same timeliness standards applicable to the petition and consist of original or legible paper or electronic copies of individual authorization cards or letters signed and dated by employees in the bargaining unit claimed appropriate.

(1)(a) Authorization cards or letters submitted in support of a petition for a new bargaining unit of unrepresented employees or to add unrepresented employees to an existing bargaining under WAC 391-25-080 are not valid unless electronically signed or hand-signed and dated during the one-year period preceding the filing of the petition. The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

~~((a))~~ (i) The employee's name typed or printed legibly, the employee's electronic or hand-signed signature, and the date of the employee's electronic or hand-signed signature;

~~((b))~~ (ii) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

~~((c))~~ (iii) A statement that the showing of interest may be used for purposes of a card check election;

~~((d))~~ (iv) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

~~((e))~~ (v) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of card check.

(b) Authorization cards submitted in support of a petition to decertify or change the bargaining representative of an existing bargaining unit of employees are not valid unless hand-signed and dated during the one-year period preceding the filing of the petition.

(2) The agency shall notify the petitioner of the existence and number of any revocations filed under subsection (1) ~~((e))~~ (a)(v) of

this section before the commencement of the card check but shall not disclose the identities of the employees involved.

(3) For any bargaining unit affected by RCW 74.39A.270 and 74.39A.300, the showing of interest requirement (~~described in subsection (1) of this section~~) is 10 percent for either a petitioner or an intervenor.

(4) The agency shall not disclose the identities of employees whose authorization cards or letters are filed with the agency in proceedings under this chapter.

(a) A petitioner or intervenor shall not serve its showing of interest on any other party to the proceeding.

(b) The question of whether a showing of interest requirement for a petition or for intervention has been satisfied is a matter for administrative determination by the agency and may not be litigated at any hearing.

(c) To preserve the confidentiality of the showing of interest and the right of employees to freely express their views on the selection of a bargaining representative, the agency shall not honor any attempt by an employee to withdraw any authorization submitted for purposes of this section.

AMENDATORY SECTION (Amending WSR 22-23-101, filed 11/16/22, effective 1/1/23)

WAC 391-25-400 Card check. (1) If only one organization is seeking certification as the exclusive representative of unrepresented employees and the showing of interest exceeds 50 percent of the employees subject to the petition, then the executive director or the executive director's designee may direct a card check to determine whether the employees desire to be represented by the petitioner. A card check may not be directed unless the petitioner submits a declaration that satisfies WAC 391-25-070(7).

(2) Any employee((s)) desiring to withdraw their showing of interest card((s)) for purposes of the card check may do so by sending an individual card or letter signed by the employee to the executive director or the executive director's designee before the date specified in the direction of card check. The agency shall notify the petitioner of any such request before the commencement of the card check but shall not disclose the identity of the employee submitting the request.

(3) ~~((The employer shall make available to the agency original or legible copies of employment records containing the names and signatures of the employees in the bargaining unit.~~

~~(4))~~ Before the commencement of the card check, the petitioner may file and serve, as required by WAC 391-08-120, a request that the question concerning representation be determined by a representation election.

~~((5) All card checks must be by actual comparison of records provided by the parties))~~ (4) When conducting card checks, the agency must compare the valid showing of interest cards submitted under WAC 391-24-110 to the agreed-upon list of eligible employees. The agency shall not disclose the names of employees giving representation authorization in favor of the organization. Following the comparison of records, the agency shall issue a tally sheet demonstrating the outcome of the card check.

~~((6))~~ (5) The card check procedures described in subsections (1) through ~~((5))~~ (4) of this section are not applicable for certificated employees who collectively bargain under chapter 41.59 RCW, academic employees who collectively bargain under chapter 28B.52 RCW, employees of the Washington state legislature who collective bargain under chapter 44.90 RCW, symphony musicians who collectively bargain under chapter 49.39 RCW, and the bargaining units described in RCW 74.39A.270, 74.39A.300, 41.56.028, 41.56.029, and 41.56.510.