

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on  
Campaigns &  
Elections  
(AC-CE)

File Naming Example:

- Record of Comm. Proceedings ... RCP
- 05hr\_AC-Ed\_RCP\_pt01a
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- 05hr\_AC-Ed\_RCP\_pt02

*Published Documents*

➤ Committee Hearings ... CH (Public Hearing Announcements)

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➤ \*\*

# Wisconsin Voter Lists

Testimony of Mark Grebner, Co-Owner of Wisconsin Voter Lists  
Before the Assembly Committee on Campaigns & Elections  
October 17, 2003

LRB 0610 & LRB 3419  
HAVA & Voter Registration Database

My firm, which does business in the Badger State as Wisconsin Voter Lists, has built a complete and accurate voter database for Wisconsin. We sell voter lists to both political parties, all major candidates and congressional representatives for official constituent mailings. Our file includes names, addresses, dates-of-birth, phone numbers, political jurisdictions, and voter history from 1996 to the present for over 4 million eligible voters. It has a very good reputation for accuracy and completeness, and was created without the use of any public resources.

To first obtain and convert computerized files from approximately 300 municipalities, and to hand key data from the remaining 1600 units of government, cost approximately \$500,000. In addition, we spend about \$100,000 each year to maintain the file and add new voter history information. In total, since 2000, we have spent about \$800,000.

I believe the state of Wisconsin is making a fundamental mistake by focusing on HAVA's requirement to build only a state list of "registered voters." To us, it appears the legislation (i.e. LRB 0610 and LRB 3410) was written to satisfy the bare-bones requirements of HAVA while not accomplishing anything particularly useful for Wisconsin. The federal law takes a typical one-size-fits-all approach. The problem is that it doesn't fit Wisconsin very well at all. While this legislation would certainly earn the federal money, it would make little or no improvement in the administration of elections in Wisconsin.

It would be far more useful, in my opinion, to focus on Wisconsin's unique system of election law, particularly the provision authorizing same-day registration at the polls. Unlike virtually every other state in the country, the list of registered voters created for each election in Wisconsin does not restrict who may actually vote. In -- say Colorado or Arkansas -- if your name is not on the list of registered voters you're basically out of luck. So getting your name on the list is crucial for every voter, and removing names in the list is an effective method of blocking an ineligible person's vote.

In Wisconsin, however, if you appear at the polls and you're not on the list of registered voters the local officials simply add you to the list and let you vote. Over 70 percent of all voter registrations in Wisconsin are taken at the polls on Election Day. As long as same-day registration is available, neither the voters nor the election officials have any reason to take pre-election voter registration seriously. This will of course compromise the quality of the data in the state list, and, again, not help in the administration of elections in Wisconsin.

Then, of course, there is also 30 percent of Wisconsin that currently does not have any voter registration system at all. The bill before you proposes that these smaller communities suddenly be required to institute registration, but that is not a given. Further, in these areas, which generally have only one polling place and virtually no full-time office staff, the lack of interest in voter registration (and the lack of quality data) will be at least as great.

The proposed legislation you are considering simply creates additional procedures, primarily on Election Day, at considerable expense. The fact that the bulk of the money is from the federal

doesn't mitigate the wastefulness. In addition, I imagine creative fiscal analysts could find a way to capture all the federal money, thereby guaranteeing funding for ongoing maintenance and upkeep of the database, even if the initial costs were kept low.

I propose that the state consider a different and broader approach. I think Wisconsin should use the federal money to create a list of "potential" voters. This list would include everyone who registered to vote at a minimum, but would also include everyone in non-registration municipalities who has voted recently. It would also include persons with drivers licenses or state-issued personal ID's and perhaps names from other sources as well.

The data could provide information, where known, establishing each potential voter's eligibility to vote under Wisconsin law (i.e. residency, age, citizenship, lack of felony record). This file, which would be only slightly larger than the proposed voter registration file (about 4.1 million total records), would ideally include every adult in the state. On Election Day, as voters appear at the polls, virtually every name would be found by election workers on the list, greatly reducing the burden of recording and checking new registrations – and facilitating expeditious voting.

Instead of wasting time on people whose eligibility is unquestioned, poll workers would focus on the handful of people whose names do not appear on the list, or for whom there appears to be some impediment to voting eligibility. For each such problematic voter, there would be a well-documented procedure for inquiring about the qualification and potentially curing it.

For example, imagine a person who appears at the polls and is noted (based on drivers license information) to be a non-citizen and therefore ineligible to vote. The election worker, whose attention has been drawn to a specific problem, asks a series of questions. Perhaps the individual is newly naturalized. The election worker, upon receiving the necessary proofs, clears the impediment and permits the new citizen to cast a ballot.

A comparable procedure would be devised to deal with each impediment to voting: lack of residency, conviction of felony, or whatever. The statewide list I propose – of all "potential voters" rather than just "registered voters" – would play an active and useful part in the conduct of elections in Wisconsin. The money invested would pay off in tighter control of potential fraud, as well as making possible quick and easy voting for most voters. And the requirements of HAVA will be satisfied.

In contrast, I think the legislation as currently proposed will result in a slightly more difficult Election Day process without offering any real improvement in security or the facilitation of elections. Because the overwhelming majority of registrations will continue to be taken at the polls, particularly on the day of presidential elections, I expect that the quality of the data will be very poor and voting at busy times will be slow and tedious. Poll workers, already facing lines of waiting voters, are simply not going to devote much attention or effort to what they see as a redundant procedure.

The first phase of this project (a consultant's study) has already consumed \$200,000. The current planning phase (again by an outside consultant) is expected to cost \$500,000 to \$850,000 more. I imagine the costs of actually converting existing municipal files and keying from paper records will be much, much more (\$26 million is mentioned in the current state HAVA plan). It's not that the proposed approach is infeasible – I'm certain that all the money can be spent and all the data can be inputted. But what exactly what you have accomplished? It doesn't seem to make sense to spend millions to create a relatively useless list.

Wisconsin Voter Lists would be happy to play a role in this process. This is what we do, we're good at it and we like to do it. Thank you for your time. ##

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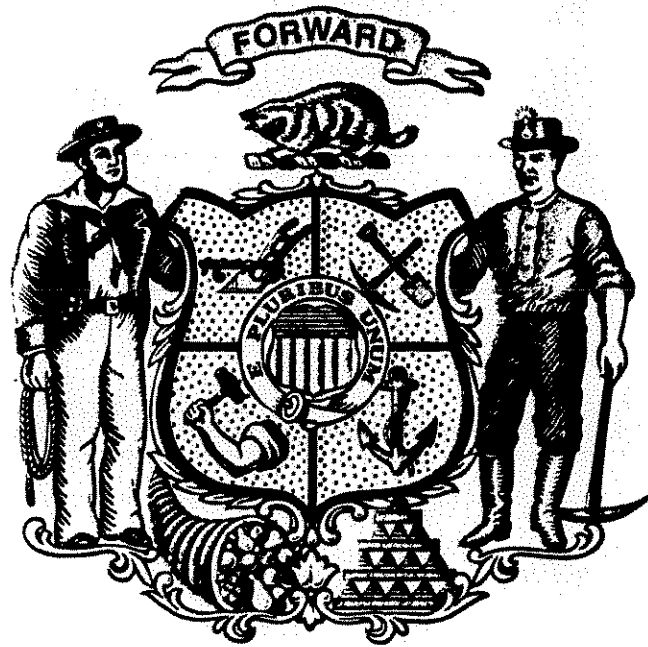
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## WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE MARK GUNDRUM

FROM: Robert J. Conlin, Senior Staff Attorney *RJC*

RE: Provisions of Assembly Bill 600 Not Specifically Required by the Federal Help America Vote Act of 2002

DATE: October 21, 2003

At the public hearing on 2003 Assembly Bill 600 (LRB-0610/7), held on October 17, 2003, you ask that I prepare a list for your review of the provisions of Assembly Bill 600 not specifically required by the Federal Help America Vote Act of 2002 (HAVA). This memorandum responds to your request.

At the outset, it is noted that HAVA imposes upon states numerous requirements for the administration of federal elections. Assembly Bill 600, applies most of the HAVA requirements to all elections in the state. Accordingly, one could argue that the extension of these federal requirements to state and local elections is not required by HAVA. However, such a dual system would likely prove too complex and difficult to implement and operate efficiently. Thus, while HAVA need not apply to state and local elections, practicality may demand that it does.

In addition, it is noted that SEC. 305 of HAVA provides that the specific choices on methods for complying with many of the requirements of HAVA are left to the discretion of the state. This provision gives Wisconsin a bit of flexibility in implementing the requirements. For example, many of the specifics of the main provisions of the bill, including the voter registration list, mandatory voter registration, and other components, could be implemented in ways other than those proposed by the bill and yet still comply with HAVA. This memorandum, however, focuses on those components of Assembly Bill 600 that do not appear to be required by HAVA and which could, theoretically, be deleted from the bill without jeopardizing the state's compliance with HAVA. However, as can be seen from the following list, most of these "optional" provisions appear to be administrative matters intended to make the election system in Wisconsin more efficient or more uniform. In fact, according to Kevin Kennedy, Executive Director, State Elections Board, most of the following recommendations were made with the intent of more easily facilitating HAVA compliance.

The remainder of this memorandum identifies the provisions of Assembly Bill 600 that are not required by HAVA and identifies their location in the bill by reference to their statutory location.

1. Section 5.05 (14): This provision authorizes the Elections Board to request information from county and municipal clerks relating to election administration, performance of electronic voting systems and voting machines, and use of paper ballots and elections.
2. Section 5.36: This provision authorizes any individual with a disability to notify a municipal clerk that he or she intends to vote at a polling place on election day and to request that a specific type of accommodation be provided to facilitate his or her voting.
3. Section 6.15 (2): This provision authorizes an individual who has resided in the state for less than 10 days at the time of the presidential election to vote for president and vice president only at the office of municipal clerk or board of election commissioners or at a polling place on election day.
4. Section 6.26 (2) (am), and related provisions: These provisions allow the Elections Board to appoint any qualified elector of the state as a special registration deputy for the purpose of registering electors of any municipality prior to the close of registration.
5. Sections 6.29 (2) (a) and 6.33 (5) (b): These provisions authorize the municipal clerk of any municipality to designate, by mutual consent, any other municipal clerk or any county clerk as the clerk's agent to carry out the functions of the municipal clerk relating to registration.
6. Sections 6.32 (4) and 6.56 (2) to (4): These provisions require that various letters or postcards mailed by clerks be marked in accordance with postal regulations to ensure that they will be returned to the clerk if the elector does not reside at the address given on the letter or postcard. [Current law typically specifies that the letter or postcard must contain a statement such as "Address Correction Requested" or "Do Not Forward."]
7. Section 6.325: This provision makes changes to the requirements that apply to a challenged elector who is registered to vote at a residence other than the one at which he or she now resides to transfer his or her registration.
8. Section 6.36 (1) (b) (1) (a): This provision exempts certain information maintained in the registration list from public inspection and provides that it only be available to certain election officials. The information includes an elector's date of birth, the elector's registration identification number, the elector's operator's license number, or Social Security account number and other information.
9. Section 6.40 (1): This provision generally requires an elector who has moved to transfer his or her registration to another municipality.
10. Section 6.95: This provision modifies the process for dealing with the ballots of challenged electors to require that a challenged ballot be marked prior to it being given to the elector.
11. Section 7.10 (9): This provision requires county clerks to assist the board in the training of election officials.
12. Section 7.10 (10): This provision requires each county clerk to provide to the Elections Board any information that the board requests under s. 5.05 (14).

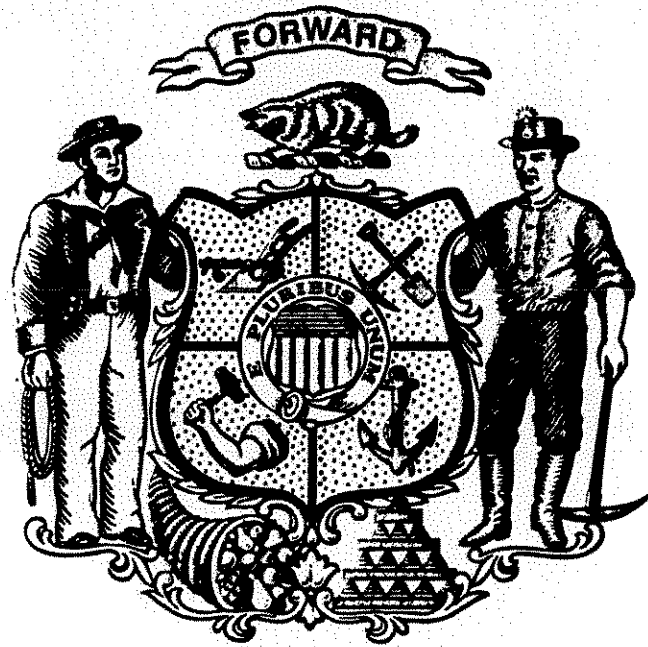
13. Section 7.15 (11): This provision requires municipal clerks to assist the board in the training of election officials.
14. Section 7.15 (13): This provision requires municipal clerks to provide information to the Elections Board that the board requests under s. 5.05 (14).
15. Nonstatutory Provision: Requires a Legislative Audit Bureau audit of compliance by state and local governments with the provisions of Assembly Bill 600.

You may wish to discuss the intent of these provisions with Kevin Kennedy, Executive Director, State Elections Board, to ascertain how these provisions may aid in the implementation of HAVA.

If you have any additional questions, please feel free to contact me at the Legislative Council staff offices.

RJC:ksm;tlu







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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE STEPHEN FREESE

FROM: Robert J. Conlin, Senior Staff Attorney

RE: Assembly Amendment \_\_ (LRBa1193/2) to 2003 Assembly Bill 600

DATE: October 22, 2003

This memorandum briefly describes Assembly Amendment \_\_ (LRBa1193/2) to 2003 Assembly Bill 600. As you know, Assembly Bill 600 relates to various requirements and changes in the law to implement the Help America Vote Act of 2002 (HAVA).

Among other things, HAVA provides that a state must require certain electors to present identification when they appear at the polls to vote. This requirement, generally, applies to electors, other than military and overseas electors, who either:

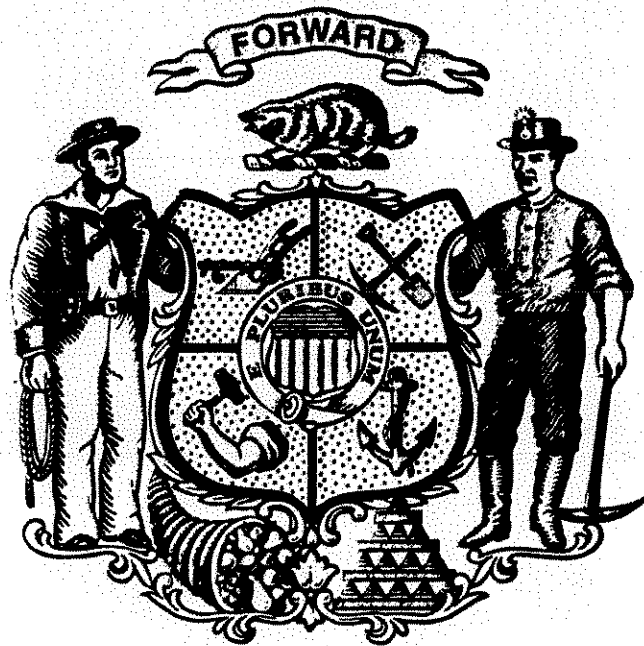
1. Registered to vote in a jurisdiction by mail and who have not previously voted in an election for federal office in the state; or
2. Registered to vote in a jurisdiction by mail and have not previously voted in such an election in the jurisdiction and the jurisdiction is located in a state that does not have a statewide computerized registration list.

Under HAVA, both the statewide voter registration system requirement and the above voter identification requirements are to apply January 1, 2004. However, a state which will not have a statewide voter registration system online by 2004 can request a waiver to extend this deadline to January 2006. Wisconsin intends to submit such a waiver request. However, HAVA does not provide for a waiver from the voter identification requirements. Assembly Bill 600, as drafted, is designed so that the voter identification requirement explained above goes into effect when the statewide voter registration system goes into effect, i.e., in 2006.

Assembly Amendment \_\_ (LRBa1193/2) to Assembly Bill 600 fills the gap for voter identification between 2004 and 2006 when Wisconsin will not have a statewide, computerized registration list by requiring voter identification from persons who registered to vote by mail and who are voting for the first time in the municipality where the elector is voting.

If you have any questions on this matter, please contact me at the Legislative Council staff offices.

RJC:tlu:ksm;tlu





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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: REPRESENTATIVE STEPHEN FREESE

FROM: Robert J. Conlin, Senior Staff Attorney

RE: Assembly Amendment 1, Assembly Amendment \_\_ (LRBa1245/1), and Assembly Amendment \_\_ (LRBa1249/1), to Assembly Bill 600, Relating to the Help America Vote Act of 2002

DATE: October 22, 2003

This memorandum, prepared at your request, briefly describes Assembly Amendment 1, Assembly Amendment \_\_ (LRBa1245/1), and Assembly Amendment \_\_ (LRBa1249/1), to Assembly Bill 600, relating to the Help America Vote Act of 2002 (HAVA). Generally, all three amendments relate to one provision of the bill.

SECTION 291 of HAVA directs the Secretary of the U.S. Department of Health and Human Services to pay to the "protection and advocacy" agency of each state certain moneys made available under HAVA. The purpose of these payments is to "ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places."

Currently, Wisconsin's protection and advocacy agency is the Wisconsin Coalition for Advocacy, a private, nonprofit organization. The statutes authorize the agency to do a number of things relating to advocating for and protecting the rights of those with developmental disabilities or mental illness. Assembly Bill 600 authorizes the agency to engage in activities to ensure full participation in the electoral process for eligible electors with developmental disabilities or mental illness, including registering to vote, voting, and obtaining access to polling places. In addition, the bill directs the state Department of Health and Family Services to distribute federal funding made available under HAVA to the agency for these activities.

### *Assembly Amendment 1*

Assembly Amendment 1 provides that the activities of the protection and advocacy agency authorized by the bill may not include encouraging or discouraging, or attempting to encourage or discourage, electors to vote for or against a particular candidate or slate of candidates or a particular question submitted to the electors at an election.

Assembly Amendment — (LRBa1245/1)

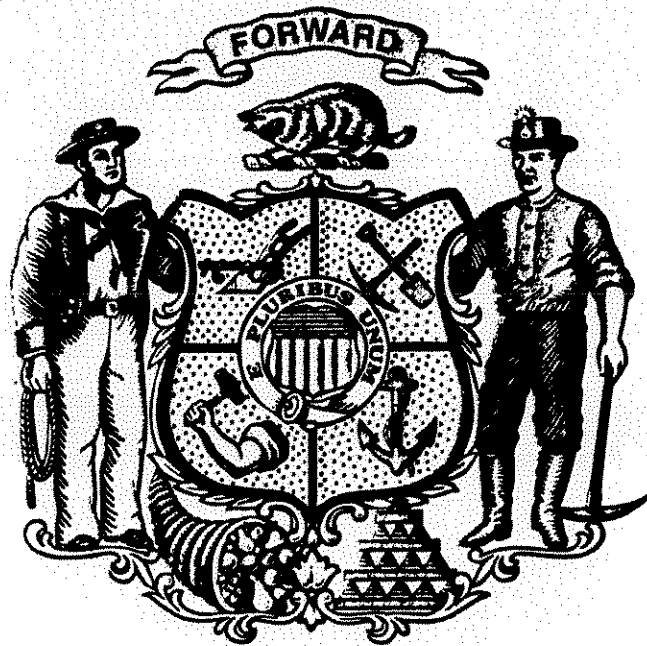
Assembly Amendment \_\_ (LRBa1245/1) deletes eligible electors with a mental illness from those for whom the bill authorizes the agency to act.

Assembly Amendment — (LRBa1249/1)

Assembly Amendment \_\_ (LRBa1249/1) provides that the activities of the agency authorized under the bill may not be conducted during the 60-day period preceding any regular election.

I hope the information in this memorandum is useful. If you have additional questions, please feel free to contact me at the Legislative Council staff offices.

RJC:ksm;wu





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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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<b>2003 Assembly Bill 600</b>	<b>Assembly Amendments 1, 2, 3, and 4</b>
<i>Memo published: October 24, 2003</i>	<i>Contact: Robert J. Conlin, Senior Staff Attorney (266-2298)</i>

Generally, Assembly Bill 600 implements provisions of the federal Help America Vote Act of 2002 (HAVA).

**ASSEMBLY AMENDMENTS 1 TO 3**

**Federal Law and the Bill**

SECTION 291 of HAVA directs the Secretary of the U.S. Department of Health and Human Services to pay to the "protection and advocacy" agency of each state certain moneys made available under HAVA. The purpose of these payments is to "ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places."

Currently, Wisconsin's protection and advocacy agency is the Wisconsin Coalition for Advocacy, a private, nonprofit organization. The statutes authorize the agency to do a number of things relating to advocating for and protecting the rights of those with developmental disabilities or mental illness. *Assembly Bill 600* authorizes the protection and advocacy agency to engage in activities to ensure full participation in the electoral process for eligible electors with developmental disabilities or mental illness, including registering to vote, voting, and obtaining access to polling places. In addition, the bill directs the state Department of Health and Family Services to distribute federal funding made available under HAVA to the agency for these activities.

Assembly Amendments 1 to 3 all relate to the above provision.

**Assembly Amendment 1**

Assembly Amendment 1 provides that the activities of the protection and advocacy agency authorized by the bill may not include encouraging or discouraging, or attempting to encourage or

discourage, electors to vote for or against a particular candidate or slate of candidates or a particular question submitted to the electors at an election.

**Assembly Amendment 2**

Assembly Amendment 2 deletes eligible electors with a mental illness from those for whom the bill authorizes the agency to act.

**Assembly Amendment 3**

Assembly Amendment 3, as amended by Assembly Amendment 1 to Assembly Amendment 3 provides that the activities of the agency authorized under the bill may not be conducted during the 30-day period proceeding a spring primary or election or the 60-day period preceding any other regular election.

**ASSEMBLY AMENDMENT 4**

**Federal Law and the Bill**

Among other things, HAVA provides that a state must require certain electors to present identification when they appear at the polls to vote. This requirement, generally, applies to electors, other than military and overseas electors, who either:

1. Registered to vote in a jurisdiction by mail and who have not previously voted in an election for federal office in the state; or
2. Registered to vote in a jurisdiction by mail and have not previously voted in such an election in the jurisdiction and the jurisdiction is located in a state that does not have a statewide computerized registration list.

Under HAVA, both the statewide voter registration system requirement and the above voter identification requirements are to apply January 1, 2004. However, a state which will not have a statewide voter registration system online by 2004 can request a waiver to extend this deadline to January 2006. Wisconsin intends to submit such a waiver request. However, HAVA does not provide for a waiver from the voter identification requirements. *Assembly Bill 600*, as introduced, is designed so that the voter identification requirement explained above goes into effect when the statewide voter registration system goes into effect, i.e., in 2006.

**Assembly Amendment 4**

Assembly Amendment 4 fills the gap for voter identification between 2004 and 2006 when Wisconsin will not have a statewide, computerized registration list by requiring voter identification from electors who registered to vote by mail and who are voting for the first time in the municipality where the elector is voting.

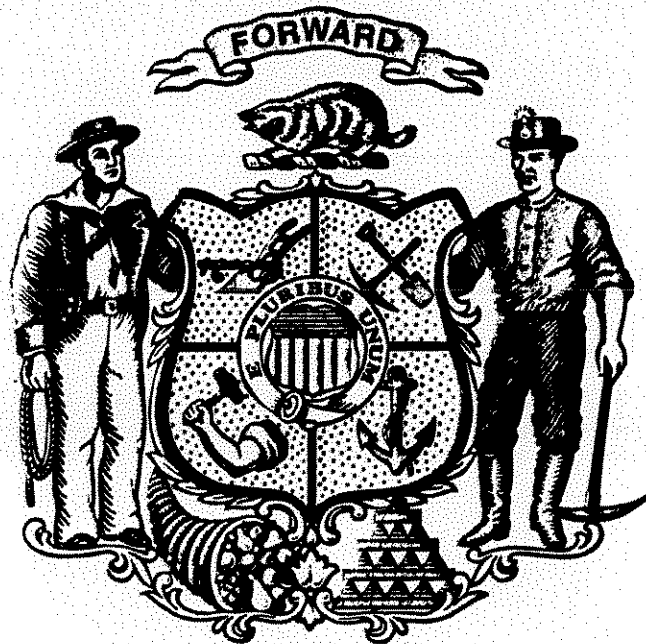


**Legislative History**

Assembly Amendment 1 was introduced by Representative Gundrum on October 21, 2003. Assembly Amendments 2 to 4 were introduced by the Assembly Committee on Campaigns and Elections on October 23, 2003.

The committee took the following action on October 23, 2003: recommended Assembly Amendment 1 for adoption on a vote of Ayes, 5; Noes, 1; recommended Assembly Amendment 2 for adoption on a vote of Ayes, 5; Noes, 1; recommended Assembly Amendment 3, as amended, for adoption on a vote of Ayes, 5; Noes, 1; recommended Assembly Amendment 4 for adoption on a vote of Ayes, 6; Noes, 0; and recommended the bill for passage, as amended, on a vote of Ayes, 5; Noes, 1.

RJC:ksm;tlu



# Wisconsin Voter Lists

Mark Grebner  
Wisconsin Voter Lists  
PO Box 6249  
East Lansing, MI 48826  
(517) 351-6682

October 27, 2003

Rep. Stephen Freese, Chair  
Assembly Committee on Campaigns & Elections  
Post Office Box 8952  
Madison, Wisconsin 53708

Re: Percentage of Election Day Registrations – Clarifying Information per Kevin Kennedy's Comments

Dear Representative Freese:

At the hearing your Committee held October 17<sup>th</sup>, I submitted written testimony regarding AB 600. Although I was unable to appear in person, my firm was represented by Barry Ashenfelter. As I explained in my testimony, I have doubts about the State's approach to implementing H.A.V.A.

One of the points I tried to make was that the overwhelming majority of new registrations are taken on Election Day, which is very different from the situation in the rest of the country. The fact that "something over 70 percent of all registrations are taken at the polls" has major implications for the pending program to create a statewide voter registration database. In particular, it suggests there will be very little need for data entry workers except after elections, and that there will be very little payoff to the proposed pre-election spending.

I was surprised to hear that Kevin Kennedy, Executive Director of the Elections Board, who had already testified, asked for an opportunity to rebut me, telling the Committee, "I don't know where they get these numbers from. That 75% number they throw around is just absurdly high and wrong. . . The number of registrations on election day is usually 7% or less. . ."

My original estimate was an off-the-cuff guess based on five years' experience working with Wisconsin voter files. I didn't expect that it would be the focus of criticism, since I assumed it was common knowledge that the availability of same-day registration has strongly discouraged efforts to register voters before Election Day. Because my assertion has now been drawn into doubt, I have conducted a more serious effort to estimate the fraction of all registrations which are taken on Election Day.

My firm contacted the Elections Board and confirmed that they do not keep any systematic information on the subject. The Board does compile a report which compares the number of Election Day registrations with the total number of votes cast, but apparently the only non-Election Day registrations they keep track of are those that occur within the final ten days before each election. They apparently have no idea how many registrations occur outside the polling place. (Oddly, they compare the number of registrations taken at the polls with the total number of votes in the state - including areas which do not have any system of registration.)

In order to estimate the fraction of registrations which are taken at the polls on Election Day, I contacted Milwaukee, Madison and Green Bay, but apparently none of them keep track of non-election-day voter registration. Instead, I have relied on voter files my firm had previously purchased from several municipalities which happen to include the exact date on which a person registered. We looked for data sets where registration data cover a full four-year cycle in order to smooth out the surge in registration associated with presidential and gubernatorial elections.

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These are the results of our research from five fairly typical mid-sized municipalities.

Village of Greendale (Milwaukee County) - 75% of all registrations taken from 1999 through 2002 were taken on the day of an election. Fully 45% of all registrations taken over the four year period occurred on the day of the 11/7/2000 Presidential election.

City of Manitowoc - 70% of registrations taken between 1999-2002 were taken on an election day. (48% on 11/7/2000.)

City of Wausau - 73% of registrations taken 1999-2002 were taken on an election day. (36% on 11/7/2000.)

City of Appleton - 75% of registrations taken 2000-2002 were taken on an election day. (We were unable to assemble a full four year cycle of data, which we estimate would have reduced the percentage to 74%.)

City of Lake Geneva - 72% of registrations taken 2000-2002 were taken on an election day. (Only three years of data was readily available to us.)

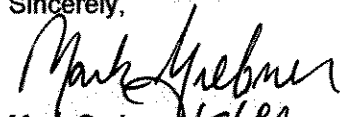
Of course, these do not constitute a random sample and the pattern could conceivably be different in the largest cities, however, I believe this information provides reasonable support for my original estimate. Our raw data is available upon request.

Mr. Kennedy, as the State's chief elections officer, has a duty to ensure the Legislature receives accurate information regarding pending legislation. I have provided this letter to him and invited his response.

I would just like to reiterate my opinion that the creation of a list of "registered" voters, rather than a list of "eligible" or "potential" voters is an expensive waste of time in Wisconsin.

Thanks for your consideration.

Sincerely,

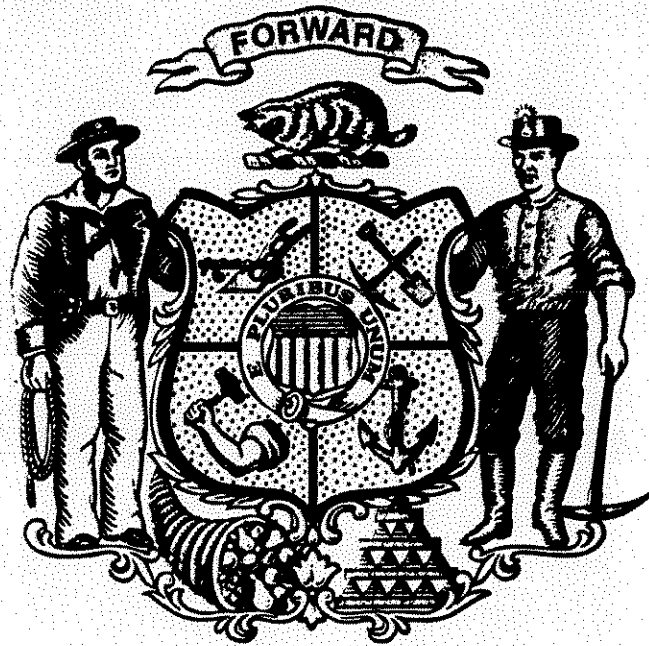


Mark Grebner (S/BA)  
Owner, Wisconsin Voter Lists

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Sen. Erpenbach  
Elections Board

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# **Assembly Republican Majority**

## **Bill Summary**

### **AB 600: Implementing the Help America Vote Act**

Relating to: election administration, voter registration and voting requirements and procedures and granting rule-making authority.

By Committee on Campaigns & Elections by request of State Elections Board

**Date:** November 5, 2003

### **BACKGROUND**

In October 2002, the federal government passed the Help American Vote Act of 2002 (HAVA). This legislation created new election administration requirements for all states and called for an upgrade of voting systems to better accommodate persons with disabilities. Specifically, HAVA calls for the creation of a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the state. The current timeline for HAVA calls for election officials to meet the majority of the HAVA requirements by January 1, 2004, and the remainder by January 1, 2006.

Assembly Bill 600 defines the necessary criteria in order for Wisconsin to meeting the federal requirements according to HAVA. The Help America Vote Act of 2002 provides a unique opportunity to add to Wisconsin's electoral tradition and develop a strong partnership between state and local elections officials. Elections in Wisconsin are conducted by municipal election officials. Local election officials recruit and train poll workers, maintain voter records, issue absentee ballots, and establish and equip polling places including acquiring voting equipment. County election officials are responsible for the preparation of ballots and notices for county, state and federal elections. They also provide a significant contribution in coordinating the work of local election officials to increase efficiency in the delivery of election services. The State elections Board is responsible for providing leadership in election administration by establishing standards to ensure uniformity and safeguarding the voter of all electors.

As part of Wisconsin's response to HAVA, the State Plan Committee is recommending the following activities:

- Design and implementation of a computerized statewide voter registration system that is the single database of all registered voters.
- Purchase and deployment of voting equipment that meets the standards established by HAVA.
- Increased access to the election process for people with disabilities through the use of specially designed voting systems, improvements to facilities, training of elections staff and enhanced public outreach. This will include an evaluation of every polling place in the state during the implementation of HAVA to identify barriers to accessibility and full voter participation.
- Implementation of a comprehensive program that informs voters about the election process in Wisconsin including where to obtain information on the voting process, how to correct ballots, how to request replacement ballots and how to obtain relief for possible violations or irregularities in the administration of state and federal election procedures.
- Implementation of a toll-free telephone line that allows voters to check the status of their provisional ballots, determine whether or not their ballot was counted and enable electors to report possible voting fraud and voting rights violations.
- Training of all election officials including chief inspectors, municipal and county clerks, along with State Elections Board staff.

### SUMMARY OF AB 600 (AS AMENDED BY COMMITTEE)

Assembly Bill 600 makes various changes in state law relating to voter registration and voting requirements and procedures and administration of elections. Many of the changes are made for the purpose of implementing numerous federal mandates imposed upon this state under the federal Help America Vote Act of 2002 and enabling receipt of federal aids by this state under that act.

HAVA directs the Secretary of the U.S. Department of Health and Human Services to pay to the "protections and advocacy" agency of each state certain moneys made available under HAVA. The purpose of these payments is to "ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places." Currently, Wisconsin's protection and advocacy agency is the Wisconsin Coalition for Advocacy, a private, nonprofit organization. The statutes authorize the agency to do a number of things relating to advocating for and protecting the rights of those with developmental disabilities. AB 600 authorizes the protection and advocacy agency to engage in activities to ensure full participation in the electoral process for eligible electors with developmental disabilities or mental illness, including registering to vote, voting and obtaining access to polling places.

The activities of the protection and advocacy agency authorized by the bill may not include encouraging or discouraging, or attempting to encourage or discourage, electors to vote for or against a particular candidate or slate of candidates or a particular question submitted to the electors at an election.

The activities of the agency authorized under the bill may not be conducted during the 30-day period preceding a spring primary or election or the 60-day period preceding any other regular election.

\* Further HAVA provides that a state must require certain electors to present identification when they appear at the polls to vote. This requirement, generally, applies to electors, other than military and overseas electors, who either: 1.) Registered to vote in a jurisdiction by mail and who have not previously voted in an election for federal office in the state; or 2.) Registered to vote in a jurisdiction by mail and have not previously voted in such an election in the jurisdiction and the jurisdiction is located in a state that does not have a statewide computerized registration list.

\* Under HAVA, both the statewide voter registration system requirement and the above voter identification requirements are to apply January 1, 2004. However, a state which will not have a statewide voter registration system online by 2004 can request a waiver to extend this deadline to January 2006. Wisconsin intends to submit such a waiver request. However, HAVA does not provide for a waiver from the voter identification requirements. The bill as amended fills the gap for voter identification between 2004 and 2006 when Wisconsin will not have a statewide, computerized registration list by requiring voter identification from electors who registered to vote by mail and who are voting for the first time in the municipality where the elector is voting.

### AMENDMENTS

**Assembly Amendment 1** to Assembly Bill 600 provides that the activities of the protection and advocacy agency authorized by the bill may not include encouraging or discouraging, or attempting to encourage or discourage, electors to vote for or against a particular candidate or slate of candidates or a particular question submitted to the electors at an election [adopted 5-1 (Rep. Pocan voted no)].

**Assembly Amendment 2** to Assembly Bill 600 deletes eligible electors with a mental illness from those for whom the bill authorizes the agency to act. [adopted 5-1 (Rep. Pocan voted no.)].

**Assembly Amendment 1 to Assembly Amendment 3** to Assembly Bill 600 is a technical amendment [adopted by unanimous consent].

**Assembly Amendment 3** to Assembly Bill 600 as amended by Assembly Amendment 1 to Assembly Amendment 3 provides that the activities of the agency authorized under the bill may not be conducted during the 30-day period preceding a spring primary or election or the 60-day period preceding any other regular election [adopted 5-1 (Rep. Pocan voted no.)].

**Assembly Amendment 4** to Assembly Bill 600 fills the gap for voter identification between 2004 and 2006 when Wisconsin will not have a statewide, computerized registration list by requiring voter identification from electors who registered to vote by mail and who are voting for the first time in the municipality where the elector is voting [adopted 6-0].

### **FISCAL EFFECT**

A fiscal estimate was not required for Assembly Bill 600. All fiscal ramifications were drafted as Assembly Bill 601.

### **PROS**

1. Assembly Bill 600 is necessary in order for Wisconsin to comply with the Federal Help America Vote Act.
2. Implementation of Assembly Bill 600 provides the mechanism for funding a statewide voter registration list.

### **CONS**

1. The Administration views amendments 1, 2 and 3 as substantive changes to the bill, which in turn has the potential to be vetoed by the Governor.
2. Assembly Bill 600 is the result of Federal mandate placed on all states. Non-compliance could result in loss of Federal dollars.

### **SUPPORTERS**

Kevin Kennedy, State Elections Board; and Barry Ashenfelter, Wisconsin Voter Lists;

### **OPPOSITION**

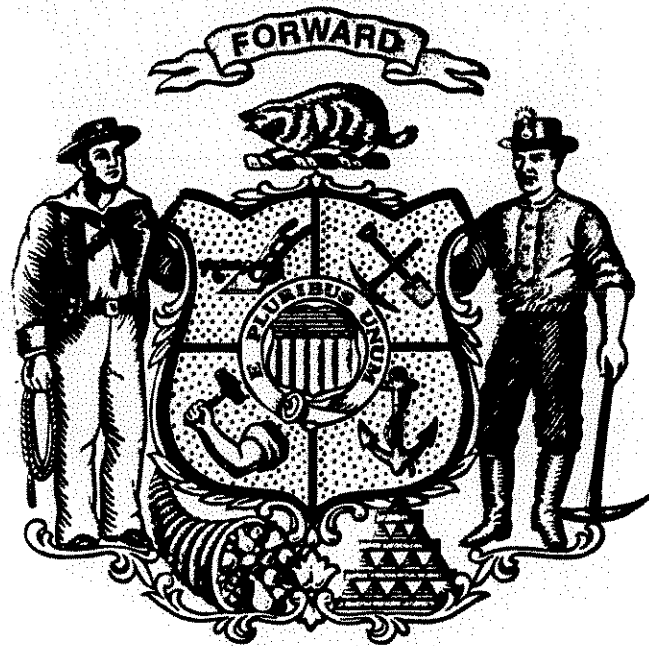
No one registered or testified in opposition to Assembly Bill 600.

### **HISTORY**

Assembly Bill 600 was introduced on October 17, 2003, and referred to the Assembly Committee on Campaigns & Elections. A public hearing was held on October 17, 2003. On October 23, 2003, the Committee voted 5-1 [Rep. Pocan voted no] to recommend passage of AB 600 as amended.

**CONTACT:** Terri S. Griffiths, Office of Rep. Steve Freese







# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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P. O. BOX 2037  
MADISON, WI 53701-2037

STEPHEN R. MILLER  
CHIEF

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

REFERENCE SECTION: (608) 266-0341  
REFERENCE FAX: (608) 266-5648

November 19, 2003

## MEMORANDUM

**To:** Senator Michael Ellis

**From:** Debora A. Kennedy, Managing Attorney  
*D.A.K.*

**Subject:** Assembly Amendment 2 to 2003 Assembly Bill 600

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On October 20, 2003, I drafted LRBa1245/1, an amendment to 2003 AB 600; this amendment was introduced by the Assembly Committee on Campaigns and Elections as Assembly Amendment 2 to the bill. On November 5, 2003, the amendment was adopted, and it is incorporated in 2003 Engrossed Assembly Bill 600, which has been referred to the Senate Committee on Education, Ethics, and Elections, of which you are the chairperson.

As originally introduced, 2003 Assembly Bill 600 contained two sections relating to a provision in the "Help America Vote Act of 2002" (HAVA) that requires federal payment of moneys to the protection and advocacy system in each state to ensure full participation in the electoral process for individuals with disabilities (42 USC 25461). (Protection and advocacy systems are federally funded organizations charged with protecting and advocating the rights of individuals with developmental disabilities under 42 USC 6042 to 6043 and individuals with mental illness under 41 USC 20801 to 10807.) The HAVA provision refers other sections of federal law that authorize advocacy by protection and advocacy systems for persons with developmental disabilities.

One bill section in Assembly Bill 600, the creation of s. 51.62 (3) (a) 4., authorized the protection and advocacy system in Wisconsin to engage in activities to ensure full participation for eligible electors with mental illness or developmental disabilities, including registering to vote, voting, and obtaining access to polling places.

Assembly Amendment 2 deleted the words "mental illness or" from s. 51.62 (3) (a) 4. In drafting Assembly Amendment 2, I included the following Drafter's Note to Representative Glen Grothman, the requester for the amendment:

"Section 291 of the "Help America Vote Act of 2002" refers to "persons with disabilities" in outlining requirements for payment to protection and advocacy agencies to ensure full participation in the electoral process. The enabling federal statutes for protection and advocacy agencies, however, refer to "persons with developmental disabilities" and "persons with mental illness." Therefore, it appears that the "Help Americans Vote Act of 2002" was referring only to persons with developmental disabilities; hence, this amendment, although it is possible that more eligible voters may be found among the population of person with mental illness."

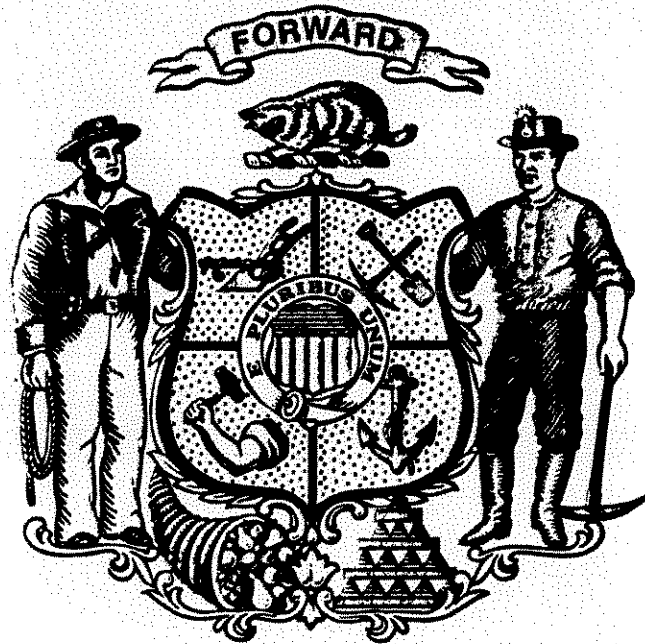
It has since come to my attention that the U. S. Department of Health and Human Services Administration for Children and Families, which places conditions on the receipt of funds to protection and advocacy systems under 42 USC 15461 of HAVA, in its grant announcement requires that the funds be used on behalf of "... individuals with the full range of disabilities [disabilities such as blindness and visual impairment, deafness or hearing impairment, mobility-related, dexterity-related, emotional or intellectual]".

The *Congressional Record* in the discussion of Amendment 2912 (the amendment to s. 565 that resulted in the protection and advocacy systems funding under HAVA) and the House Conference Report that summarizes Public Law 107-252 (HAVA) shed little light on the issue.

However, had I been apprised of this information at the time of drafting, I would have reworded the third sentence of my Drafter's Note to state, "Although the "Help America Vote Act of 2002" does not define "disabilities" and although that Act specifically refers to federal authorization for advocacy for persons with developmental disabilities, implementation of the Act appears to include persons with mental illness, as well as those with developmental disabilities."

cc Representative Glenn Grothman

cc Representative Stephen Freese, Chair, Assembly Committee on Campaigns and Elections





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**WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO**

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<b>2003 Engrossed Assembly Bill 600</b>	<b>Senate Amendments 1 and 2</b>
<i>Memo published: January 29, 2004</i> <i>Contact: Robert J. Conlin, Senior Staff Attorney (266-2298)</i>	

Generally, Engrossed Assembly Bill 600 implements provisions of the federal Help America Vote Act of 2002 (HAVA).

**Senate Amendment 1**

Section 291 of HAVA directs the Secretary of the U.S. Department of Health and Human Services to pay to the "protection and advocacy" agency of each state certain moneys made available under HAVA. The purpose of these payments is to "ensure full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places."

Currently, Wisconsin's protection and advocacy agency is the Wisconsin Coalition for Advocacy, a private, nonprofit organization. The statutes authorize the agency to do a number of things relating to advocating for and protecting the rights of those with developmental disabilities or mental illness. Engrossed Assembly Bill 600 authorizes the protection and advocacy agency to engage in activities to ensure full participation in the electoral process for eligible electors with developmental disabilities, including registering to vote, voting, and obtaining access to polling places. Under the engrossed bill, such activities may not include encouraging or discouraging, or attempting to encourage or discourage, electors to vote for or against a particular candidate or slate of candidates or a particular question submitted to the electors at an election. In addition, the activities authorized by the engrossed bill may not be conducted during the 30-day period preceding any spring primary or election or the 60-day period preceding any other regular election. In addition, the engrossed bill directs the state Department of Health and Family Services to distribute federal funding made available under HAVA to the agency for these activities.

Senate Amendment 1 deletes all of the above-described provisions of the Engrossed Assembly Bill relating to the protection and advocacy agency described above.

**Senate Amendment 2**

To receive certain federal moneys under HAVA, the state must file with the federal government a plan for how the state intends to meet the various requirements of HAVA and how the state will go about distributing and monitoring the distribution of federal payments under HAVA for election administration.

Engrossed Assembly Bill 600 requires the State Elections Board, with the assistance of the Election Administration Council, to adopt and modify as necessary a state plan that meets the requirements of HAVA in order for the state to participate in federal financial assistance programs under HAVA. Under the engrossed bill, the board must adopt the plan and any modifications only after publishing a public notice or posting on the Internet a statement describing the proposed plan or modification and receiving public comment thereon.

Senate Amendment 2 requires, in addition, that the Elections Board also develop the plan with the approval of the Joint Committee on Finance. Senate Amendment 2 provides that after approval of the proposed plan or any modification of the plan by the Elections Board, the board must submit the proposed plan or modification to the Joint Committee on Finance for the approval of the committee. Senate Amendment 2 provides that the board may adopt the proposed plan or modification only if the committee approves the proposed plan or modification.

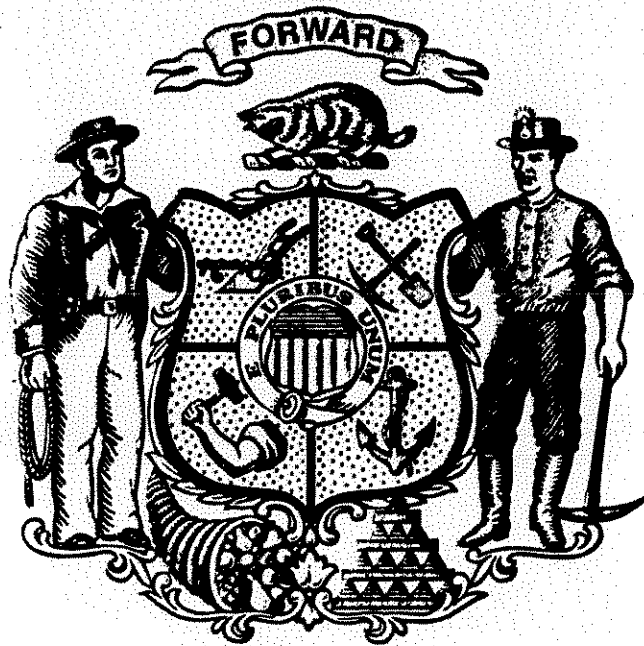
**Legislative History**

Senate Amendment 1 was introduced by the Senate Committee on Education, Ethics, and Elections on January 20, 2004, and was adopted by the Senate on a voice vote on January 28, 2004.

Senate Amendment 2 was offered by Senators Darling and Welch on January 28, 2004 and adopted by the Senate on a voice vote on the same date.

Engrossed Assembly Bill 600 was concurred in by the Senate, as amended, on a voice vote on January 28, 2004.

RJC;jal;ksm



US DOT monitoring WI as one of six or seven states who haven't finished this.

#42 million @ risk  
#7 million already in the bank and partially spent on voter regis. and poll worker training



Potential lawsuit if not done

WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO

2003 Engrossed Assembly Bill 600	Senate Amendments 1 and 2
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Memo published: January 29, 2004      Contact: Robert J. Conlin, Senior Staff Attorney (266-2298)

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C.B.R.F.'S



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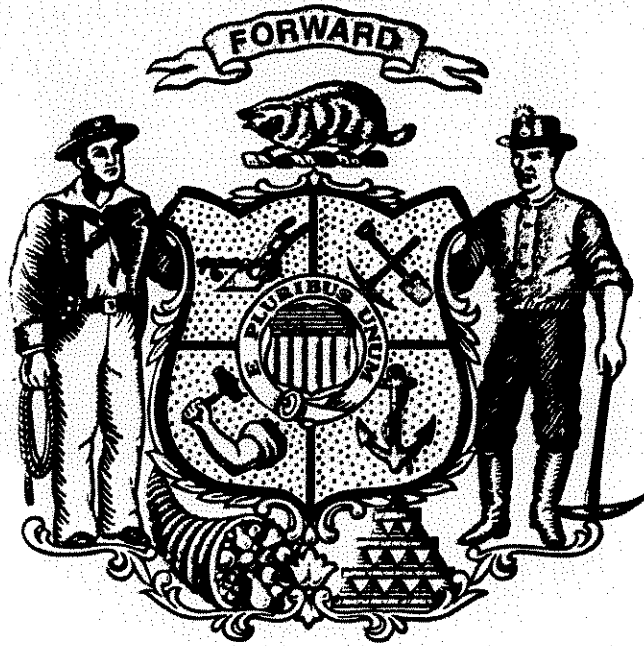
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RJC:jal;ksm



**Griffiths, Terri**

**From:** Kennedy, Kevin  
**Sent:** Wednesday, February 25, 2004 3:05 PM  
**To:** Griffiths, Terri  
**Subject:** Ten States Still Debating Help America Vote Act Compliance Legislation

*US DOJ is monitoring  
our progress.  
We face a federal lawsuit  
against us for non-  
compliance. More \$ to  
attend.*

Terri,

You can share this with Steve.

Kevin

**Ten States Still Debating Help America Vote Act Compliance Legislation**

By Dan Seligson  
[electionline.org](http://electionline.org)

Ten states still lack laws on their books that make them compliant with the Help America Vote Act, despite a January 1 deadline for voter identification and provisional voting rules - including three states holding primaries on Super Tuesday.

In Arizona, Iowa, Kansas, Massachusetts, Mississippi, New Jersey, New York, Rhode Island, Wisconsin and Wyoming, legislatures have not yet completed their work on legislation that would meet federal mandates for identification from first-time voters who register by mail and do not provide verification with their applications.

Using their regulatory authority, most election directors in the states lacking HAVA-compliance legislation will make sure the mandates are met, however.

Democratic voters in Massachusetts, Rhode Island and New York will have the opportunity to cast ballots in the March 2 primary. Their states, however, could be lacking federally-compliant rules on the books.

The Bay State will not implement voter ID for Super Tuesday. Michelle Tassinari, legal counsel for Massachusetts' election division, said her office met with the U.S. Department of Justice and requested more guidance on handling voter identification in some communities before implementing HAVA-compliant rules for the primary. She said DOJ "would not take action" against the state for failing to comply.

New York lawmakers still have not passed legislation that would create a requisite administrative complaint procedure for voters who report problems. In that state, election officials have told [electionline.org](http://electionline.org) and other organizations that HAVA rules do not apply to the primary, despite evidence that would suggest otherwise.

While HAVA does not define a "federal election," the Federal Election Campaign Act defines the term "election" to include "a primary election held for the selection of delegates to a national nominating convention of a political party."

Wisconsin held its presidential primary earlier this week and with legislation still pending the State Elections Board issued a directive to implement HAVA-compliant voter identification rules.

Mississippi election director Leslie Scott said directives will ensure federally-required compliance, regardless of the status of bills in the legislature.

"We believe the federal law is superior to state law in a federal election," she said. "We will be in compliance for the [March primary] election."

There has been some progress in a number of states that have lagged behind the rest of the country in adopting HAVA rules.

- In Arizona, S.B. 1375 would require all voters to show identification (and therefore, would exceed HAVA's minimum requirements). It passed the Senate Judiciary Committee by a five-to-four vote this week.
- S.B. 2250 would allow Mississippi to meet HAVA voter identification requirements. It was introduced in January and passed the Senate Elections Committee this week. The legislature failed to pass HAVA-compliance legislation last session because of partisan differences over voter identification rules.
- Wisconsin's Assembly Committee on Rules is considering Senate amendments to A.B. 600, which would meet HAVA rules on voter identification.
- New York lawmakers will consider A8841, to establish an administrative complaint procedure, and A8842, to require voter identification of first-time voters who register by mail.
- Voter identification legislation in New Jersey has been controversial as well. The State Senate is currently considering S.701, which would eliminate HAVA's ID requirements for voters whose registration applications were delivered to authorities by a third party (except for mail delivery). Garden State Republicans are resisting the change, and have argued that such a narrowing of the HAVA identification requirements could invite federal enforcement scrutiny.

Dan Seligson

Election Reform Information Project

[electionline.org](http://electionline.org)

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