

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0048/1dn

JTK:kmg:cph

March 25, 2003

Senator Reynolds:

1. The federal Help America Vote Act of 2002 (P.L. 107-252) requires that, in elections for national office, electors other than military and overseas electors, as defined by federal law, must provide a specified form of identification in order to vote if they register by mail and have never voted in an election for national office in this state. The form of identification required is different than the form required under this draft. (See section 303 (b) (2) (A) of P.L. 107-252.) The Help America Vote Act requires state-implementing legislation and that legislation has not yet been introduced or considered by the Wisconsin legislature.

2. It is possible that, if enacted, this draft may activate certain requirements under the National Voter Registration Act from which this state is currently exempt. Primarily, these requirements include voter registration simultaneously with motor vehicle driver's license applications and renewals, voter registration at any office that provides public assistance, voter registration at any office that primarily provides state-funded services to persons with disabilities, and voter registration at armed forces recruiting offices. This act exempts any state which, since May 20, 1993, has continuously permitted all voters in federal elections to "... register to vote at the polling place at the time of voting." 42 USC 1973gg-2 (b) (2). The Help America Vote Act also contains a provisional balloting procedure for all electors who vote at polling places in elections for federal office whenever their ballots are not accepted, but states that are exempt from compliance with the National Voter Registration Act under 42 USC 1973gg-2 (b) are not covered by this procedure. Because this draft will preclude some persons from registering and voting on election day if the persons have no acceptable ID and are unable to obtain them from the department of transportation before the close of the polls, it could be interpreted to make these federal exemptions inapplicable. You may want to consider allowing these persons, only for the applicable election, to establish their identity by corroboration or to provide some type of statement certifying their identity and residence.

3. This draft includes a procedure under proposed s. 6.97 whereby a person who has registered to vote by mail and has not voted previously in a federal election in this state and who does not have a Wisconsin driver's license, a uniformed service identification card, or a Wisconsin identification card may vote a marked ballot and then, by 4 p.m.

or the close of business, whichever is later, on the day after the election, provide the required identification to the municipal clerk or board of election commissioners. This provisional balloting procedure differs from the procedure required under the Help America Vote Act, section 302 (a), in that it does not apply to absentee voters, it places the burden on the voter to verify his or her identity, whereas the federal procedure places the burden on state and local election officials, and it includes a specific deadline for provisional ballots to be validated, whereas the federal law does not include any deadline.

4. Under this draft, electors who vote in person must present a specified form of identification, but electors who vote by absentee ballot, except military and overseas electors, need only present a copy of that identification. Although there is some argument to be made that this disparate treatment may not comport with equal protection requirements, it is probable that the treatment would be found to have a rational basis. To avoid the issue entirely, however, you may want to consider requiring all absent electors, except military and overseas electors, to obtain an absentee ballot in person and to present an I.D.

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