

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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February 12, 2003

Kevin Kennedy:

1. The portions of the federal law relating to the required agreements between the Elections Board and DOT and between DOT and the Commissioner of Social Security have yet to be incorporated into this draft. We will redraft to include these portions when time permits.

2. Concerning proposed s. 5.02 (24w) and the proposed treatment of s. 5.25 (4) (a), stats., which require the voting system used at a polling place ensure access for physically disabled persons, you express concern that the use of the term "voting system" might preclude the use of more than one type of system at a particular polling place. The definition of "voting system" is taken from P.L. 107-252, sec. 301 (b), and encompasses "[t]he total combination of mechanical, electromechanical, or electronic equipment...that is used to define ballots, to cast and count votes, to report or display election results, and to maintain and produce any audit trail information.". In my opinion, this definition encompasses more than one type of voting system and s. 5.25 (4) (a), stats., as amended, does not preclude the use of more than one type of voting system at the same polling place.

3. Concerning proposed s. 5.061, which establishes a complaint procedure for certain alleged violations of P.L. 107-252, sec. 402 (a) (2) (F) of P.L. 107-252 requires a state, if the state determines that there is a violation of any provision of Title III of P.L. 107-252, to "provide the appropriate remedy." Although it may not have been intended, it may be argued that the only remedy that is appropriate for some violations is to correct a canvass and potentially thereby to change an election result. Proposed s. 5.061 (4), which precludes this action, may be inconsistent with the federal requirement.

4. Proposed s. 6.33 (5) (a) generally requires municipal clerks and their agents to promptly enter new registrations in the electronic registration list. However, new registrations at a polling place may be entered within ten days of the election at which they occur. As a practical matter, this should present no problem. However, the language of P.L. 107-252 is tight on this point. Section 303 (a) (1) (a) (vi) provides that "[a]ll voter registration information obtained by any local election official...shall be electronically entered into the computerized list on an expedited basis *at the time that the information is provided to the local official.*". Proposed s. 6.33 (5) (a) appears to be

inconsistent with the federal language. The quoted language also appears to run counter to the procedure in proposed s. 6.33 (5) (b) under which municipal clerks who delegate their responsibilities to maintain their electronic registration lists may take in new registrations and send them to their agents for entry at a later time.

5. Concerning proposed s. 6.33 (5) (b), which permits municipal clerks to delegate their electronic registration responsibilities to another clerk or the board by mutual consent, this draft amends s. 6.29 (2) (a), stats., to permit an elector who wishes to register at the clerk's office after the close of registration to register at the office of the agent instead of at the office of the clerk. The reasons I did this were that the agent will in some cases be more likely to be open for business for 40 hours per week and direct registration with the agent will facilitate immediate updating of the electronic list at the time when prompt updating is most critical.

6. Proposed s. 6.36 (1) (b) 1. a., which precludes access to certain information in registration lists by certain election officials, appears to contravene P.L. 107-252, sec. 303 (a) (1) (A) (v), which provides that any election official in the state, including any local election official, must be able to obtain immediate electronic access to the information contained in the computerized registration list. Perhaps this provision was only intended to ensure electronic access to nonconfidential information in the list, but the wording is unfortunately broader than that.

7. Concerning the proposed requirement in s. 6.82 (1) (a), stats., for an individual who assists another elector in voting to provide proof of his or her own residence, this statute is based upon 42 USC s. 1973aa-6, which does not contain this requirement.

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Please see proposed ss. 5.056, 19.69 (4), and 85.61 for provisions relating to agreements that the secretary of transportation is required to enter into for the matching of personally identifiable information.

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