

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0610/P3ins
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INS 3-1:

[✓]
SECTION 1. 5.02 (6m) of the statutes is created to read:

5.02 (6m) "Identification" means:

(a) In the case of an elector who votes in person, either of the following:

1. A current and valid piece of identification containing a photograph of the elector. ✓

2. A copy of a utility bill, bank statement, paycheck, or a check or other document issued by a unit of government that shows the current name and address of the elector. ✓

(b) In the case of an elector who votes by absentee ballot, either of the following:

1. A copy of a current and valid piece of identification containing a photograph of the elector. ✓

2. A copy of a utility bill, bank statement, paycheck, or a check or other document issued by a unit of government that shows the current name and address of the elector. ✓

INS 4-17:

[✓] [✓]
SECTION 2. 5.05 (12) and (13) of the statutes are created to read:

5.05 (12) VOTER EDUCATION. The board may conduct or prescribe requirements for educational programs to inform electors about voting procedures, voting rights and voting technology. The board shall conduct an educational program for the purpose of educating electors who cast paper ballots, ballots that are counted at a ✓

central counting location and absentee ballots of the effect of casting excess votes for a single office.

(13) TOLL-FREE ELECTION INFORMATION EXCHANGE. The board may maintain one or more toll-free telephone lines for electors to report possible voting fraud and voting rights violations, to obtain general election information and to access information concerning their registration status, current polling place locations and other information relevant to voting in elections. The board shall maintain a toll-free information system under which an elector who votes under s. 6.96 or 6.97 may ascertain current information concerning whether the elector's vote has been counted, and if the vote will not be counted, the reason that it will not be counted.

INS 5-1:

SECTION 3. 5.061^X of the statutes is created to read:

5.061 Compliance with federal Help America Vote Act. (1) Whenever any person believes that a violation of Title III of P.L. 107-252 has occurred, is occurring or is proposed to occur with respect to an election for national office in this state, that person may file a written, verified complaint with the board.

(2) If the board receives more than one complaint under sub. (1) relating to the same subject matter, the board may consolidate the complaints for purposes of this section.

(3) The complainant or any of the complainants in a consolidated complaint may request a hearing and the matter shall be treated as a contested case under ch. 227, except that the board shall make a final determination with respect to the merits of the complaint and issue a decision within 89 days of the time that the complaint

or the earliest of any consolidated complaints was filed, unless the complainant, or each of any consolidated complainants, consents to a specified longer period. ✓

(4) If the board finds the complaint to be without merit, it shall issue a decision dismissing the complaint. If the board finds that the violation alleged in the complaint has occurred, is occurring, or is proposed to occur, the board shall order appropriate relief. If the board finds that the relief requires that the canvass of an election be revised, ^{the} board shall order the canvass to be reopened. Upon completion of the required canvass, the chairperson of the board or the chairperson's designee shall issue a revised statement and determination with respect to the canvass, and shall withdraw any certificate of election that was improperly issued and issue a corrected certificate of election. ✓

SECTION 4. 5.25 (4) (a) of the statutes is amended to read:

5.25 (4) (a) Each polling place shall be accessible to elderly and handicapped all physically disabled individuals. The board shall ensure that the voting system used at each polling place will permit all physically disabled individuals to vote without the need for assistance and with the same degree of privacy that is accorded to nondisabled electors voting at the same polling place. In any jurisdiction that is subject to the requirement under 42 USC 1973aa-1a to provide voting materials in any language other than English, the board shall ensure that the voting system used at each polling place in that jurisdiction is in compliance with 42 USC 1973aa-1a. ✓

History: 1975 c. 275; 1977 c. 427; 1979 c. 89; 1983 a. 332; 1985 a. 304, 332; 1987 a. 391; 1989 a. 192; 1999 a. 182.

SECTION 5. 5.25 (4) (c) of the statutes is repealed.

SECTION 6. 5.35 (6) (a) 2m., 4., 4a. and 4b. of the statutes are created to read:

5.35 (6) (a) 2m. General information prescribed by the board on federal laws relating to election fraud and misrepresentation in federal elections.

4. The date of the election and the hours during which the polling place is open.

4a. Instructions prescribed by the board for electors who are voting for the first time after registering to ~~o~~ vote.

4b. General information prescribed by the board concerning voting rights under applicable state and federal laws, including the method of redress for any alleged violations of those rights.

SECTION 7. 5.40 (6) of the statutes is amended to read:

5.40 (6) A municipality which utilizes voting machines or an electronic voting system at a polling place may permit use of the machines or system by electors voting under s. 6.15 only as authorized under s. 6.15 (3) (b).

History: 1971 c. 304 s. 29 (2); 1973 c. 112; 1977 ~~c. 427~~; 1979 c. 235, 311, 355; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1993 a. 399.

SECTION 8. 5.87 of the statutes is renumbered 5.87 (1).

SECTION 9. 5.87 (2) of the statutes is created to read:

5.87 (2) The board shall, by rule, prescribe uniform standards for determining the validity of votes cast or attempted to be cast with each electronic voting system approved for use in this state under s. 5.91. The rules shall apply only to situations that may arise in which the validity of a vote or attempted vote cast by an elector utilizing a particular system cannot be determined under s. 7.50. ~~e~~ are

SECTION 10. 5.91 (15) to (18) of the statutes is created to read:

5.91 (15) It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

(16) It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.

(17) Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.

(18) It produces a permanent paper record of the vote cast by each elector at the time that it is cast that enables a manual count or recount of the elector's vote.

SECTION 11. 6.06 of the statutes is created to read:

6.06 Information for uniformed service members. The board is the agency designated by this state under 42 USC 1973ff-1 to provide information regarding voter registration and absentee balloting procedures to absent members of the uniformed services and overseas voters with respect to elections for national office.

SECTION 12. 6.15 (2) (title) of the statutes is amended to read:

6.15 (2) (title) ~~APPLICATION FOR BALLOT~~ PROCEDURE AT CLERK'S OFFICE.

History: 1977 c. 394; 1979 c. 311; 1981 c. 391; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1997 a. 250; 1999 a. 182; 2001 a. 16, 104.

SECTION 13. 6.15 (2) (a) (intro.) of the statutes is amended to read:

6.15 (2) (a) (intro.) The elector's request for the application form may be made to the proper municipal clerk either in person or in writing ~~any time during the 10-day period in which the elector's residence requirement is incomplete, but not later than the applicable deadline for making application for an absentee ballot.~~ Application may be made not sooner than 9 days nor later than 5 p.m. on the day before the election, or may be made at the proper polling place in the ward or election district in which the elector resides. If the ballot is to be mailed, the application must be received no later than 5 p.m. on the Friday before the election. The application form shall be returned to the municipal clerk after the affidavit has been signed in

the presence of the clerk or any officer authorized by law to administer oaths. The affidavit shall be in substantially the following form:

History: 1977 c. 394; 1979 c. 311; 1981 c. 391; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1997 a. 250; 1999 a. 182; 2001 a. 16, 104.

SECTION 14. 6.15 (2) (bm) of the statutes is created to read:

6.15 (2) (bm) When making application at the office of the municipal clerk, each applicant shall provide acceptable proof of residence under s. 6.55 (7). If the applicant cannot provide acceptable proof of residence, the applicant may have his or her residence corroborated by another elector of the municipality. The corroborating elector shall then provide acceptable proof of residence under s. 6.55 (7).

SECTION 15. 6.15 (2) (e) of the statutes is created to read:

6.15 (2) (e) If the elector makes application in writing but does not appear in person, and the clerk receives a properly completed application and cancellation card from the elector, the clerk shall provide the elector with a ballot. In order to be counted, the ballot must be received by the municipal clerk no later than 5 p.m. on the day before the election.

SECTION 16. 6.15 (3) (title) of the statutes is amended to read:

6.15 (3) (title) ~~VOTING PROCEDURE~~ PROCEDURE AT POLLING PLACE.

History: 1977 c. 394; 1979 c. 311; 1981 c. 391; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1997 a. 250; 1999 a. 182; 2001 a. 16, 104.

SECTION 17. 6.15 (3) (a) (title) of the statutes is repealed.

SECTION 18. 6.15 (3) (a) 1., 2. and 3. of the statutes are renumbered 6.15 (2) (d)

1r., 2. and 3. and 6.15 (2) (d) 1r., as renumbered, is amended to read:

6.15 (2) (d) 1r. Upon proper completion of the application and cancellation card, the municipal clerk shall ~~inform the elector that he or she may vote for the presidential electors not sooner than 9 days nor later than 5 p.m. on the day before the election at the office of the municipal clerk, or at a specified polling place on election day. When voting at the municipal clerk's office, the applicant shall provide~~

identification and require the elector to provide acceptable proof of residence under s. 6.55 (7). If the elector cannot provide acceptable proof of residence, the elector may have his or her residence corroborated by another elector of the municipality. If the residence is corroborated by another elector, that elector shall then provide proof of residence under s. 6.55 (7). The elector shall then mark the ballot in the clerk's presence in a manner that will not disclose his or her vote. Unless the ballot is utilized with an electronic voting system, the applicant elector shall fold the ballot so as to conceal his or her vote. The applicant elector shall then deposit the ballot and seal it in an envelope furnished by the clerk.

History: 1977 c. 394; 1979 c. 311; 1981 c. 391; 1983 a. 444; 1985 a. 304; 1987 a. 391; 1997 a. 250; 1999 a. 182; 2001 a. 16, 104.

SECTION 19. 6.15 (3) (b) (title) of the statutes is repealed.

History: 1977 c. 394; 1979 c. 311; 1981 c. 391; 1983 a. 444; 1985 a. 304; 1987 a. 391; 1997 a. 250; 1999 a. 182; 2001 a. 16, 104.

SECTION 20. 6.15 (3) (b) of the statutes is renumbered 6.15 (3) and amended to

read:

6.15 (3) Election day. An eligible elector may appear at the polling place for the ward or election district where he or she resides and make application for a ballot under sub. (2). In such case, the inspector or special registration deputy Except as otherwise provided in this subsection, an elector who casts a ballot under this subsection shall follow the same procedure required for casting a ballot at the municipal clerk's office under sub. (2). The inspectors shall perform the duties of the municipal clerk. The elector shall provide identification. If the elector is qualified, he or she shall be permitted to vote, except that the inspectors shall return the cancellation card under sub. (2) (b) to the municipal clerk and the clerk shall forward the card as provided in sub. (2) (c) if required. Upon proper completion of the application and cancellation card and submittal of acceptable proof of residence under s. 6.55 (7) or providing corroboration of residence, the inspectors shall permit

Voting procedure Procedure at polling place (CS)

the elector to cast his or her ballot for president and vice president. The elector shall mark the ballot and, unless the ballot is utilized with an electronic voting system, the elector shall fold the ballot, and shall deposit the ballot into the ballot box or give it to the inspector. The inspector shall deposit it directly into the ballot box. Voting machines or ballots utilized with electronic voting systems may only be used by electors voting under this section if they permit voting for president and vice president only.

History: 1977 c. 394; 1979 c. 311; 1981 c. 391; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1997 a. 250; 1999 a. 182; 2001 a. 16, 104.

INS 6-5:

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SECTION 21. 6.276 of the statutes is created to read:

6.276 Federal absentee voting statistics. (1) In this section, "military elector" and "overseas elector" have the meaning^S given in s. 6.36 (2) (c). ✓

(2) Within 90 days after each general election, each municipal clerk shall transmit to the federal Election Assistance Commission a report of the number of absentee ballots transmitted by the clerk to absent military electors and overseas electors for that election and the combined number of those ballots that were cast by those electors in that election.

INS 12-13:

¶ SEC. #. CR; 6.36 (2)(c)

¶ 6.36 (2) (c) 1. In this paragraph:

ⓑ a. "Military elector" means a member of a uniformed service on active duty who, by reason of that duty, is absent from the residence where the member is otherwise qualified to vote; a member of the merchant marine, as defined in s. 6.22 (1) (a), who by reason of service in the merchant marine, is absent from the residence where the

member is otherwise qualified to vote; or the spouse or dependent of any such member who, by reason of the duty or service of the member, is absent from the residence where the spouse or dependent is otherwise qualified to vote.

b. "Overseas elector" means an elector who resides outside the United States and who is qualified under federal law to vote in elections for national office in this state because the elector was last domiciled in this state immediately prior to the elector's departure from the United States.

2. If the registration list is prepared for use at an election for national office, the list shall contain, next to the name of each elector, an indication of whether identification is required for the elector to be permitted to vote. Identification is required if the elector is not a military elector or an overseas elector and the elector registers by mail and has not previously voted in an election for national office in this state.

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INS 12-18:

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SECTION 22. 6.40 (2) (b) of the statutes is amended to read:

6.40 (2) (b) In addition to the revision which is required under s. 6.50, municipal clerks may conduct door-to-door and mail registration canvasses at any time. The door-to-door canvass shall consist of both the deletion from the registration list of the names of electors who no longer reside at the address for which they are registered and the addition to the registration list of the names of electors who reside at that address. The mail canvass shall consist of the municipal clerk examining the registration records and canceling the registration of electors after the mailing of notices in accordance with s. 6.50 (1) and (2) ~~or (2m)~~.

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may also consist of adding to the registration list the names of eligible electors. Both door-to-door and mail canvasses whenever made shall be made throughout the municipality in a uniform manner. An elector who wishes to obtain a confidential listing under s. 6.47 (2) shall register at the office of the municipal clerk of the municipality where the elector resides.

History: 1971 c. 242; 1971 c. 304 s. 29 (1), (2); 1975 c. 85, 199, 200; 1977 c. 394 ss. 23, 24, 53; 1983 a. 484; 1985 a. 304; 1999 a. 49.

INS ¹³~~11~~-24:

SECTION 23. 6.50 (8) of the statutes is amended to read:

6.50 (8) Any municipal governing body may direct the municipal clerk or board of election commissioners to arrange with the U.S. postal service pursuant to applicable federal regulations, to receive change of address information with respect to individuals residing within the municipality for revision of the elector registration list. If required by the U.S. postal service, the governing body may create a registration commission consisting of the municipal clerk or executive director of the board of election commissioners and 2 other electors of the municipality appointed by the clerk or executive director for the purpose of making application for address changes and processing the information received. The municipal clerk or executive director shall act as chairperson of the commission. Any authorization under this subsection shall be for a definite period or until the municipal governing body otherwise determines. The procedure shall apply uniformly to the entire municipality whenever used. The procedure shall provide for receipt of complete change of address information on an automatic basis, or not less often than once every 2 years during the 60 days preceding the close of registration for the September primary. If a municipality adopts the procedure for obtaining address corrections

under this subsection, it need not comply with the procedure for mailing address verification cards under subs. (1) and (2) ~~or (2m)~~. ✓

History: 1971 c. 242; 1971 c. 304 s. 29 (2); 1971 c. 336 s. 37; 1973 c. 164; 1975 c. 85, 199, 200; 1977 c. 394 ss. 27, 53; 1979 c. 260; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1999 a. 150 s. 672.

21-13

INS ~~27-28~~

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SECTION 24. 6.82 (1) (a) of the statutes is amended to read:

6.82 (1) (a) When any inspectors are informed that an elector is at the entrance to the polling place who as a result of disability is unable to enter the polling place, they shall permit the elector to be assisted in marking a ballot by any individual selected by the elector, except the elector's employer or an agent of that employer or an officer or agent of a labor organization which represents the elector. The individual selected by the elector shall provide identification, whenever required, and all other information necessary for the elector to obtain a ballot under s. 6.79 (2). ✓

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The inspectors shall issue a ballot to the individual selected by the elector and shall accompany the individual to the polling place entrance where the assistance is to be given. If the ballot is a paper ballot, the assisting individual shall fold the ballot after the ballot is marked by the assisting individual. The assisting individual shall then immediately take the ballot into the polling place and give the ballot to an inspector. The inspector shall distinctly announce that he or she has "a ballot offered by (stating person's name), an elector who, as a result of disability, is unable to enter the polling place without assistance". The inspector shall then ask, "Does anyone object to the reception of this ballot?" If no objection is made, the inspectors shall record the elector's name under s. 6.79 and deposit the ballot in the ballot box, and shall make a notation on the ~~registration or~~ poll list: "Ballot received at poll entrance".

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History: 1971 c. 304 s. 29 (2); 1975 c. 85, 199, 275; 1977 c. 26; 1977 c. 394 s. 53; 1979 c. 260, 311, 355; 1983 a. 484; 1985 a. 304; 1987 a. 391; 1989 a. 192; 2001 a. 16.

INS 22-20

SECTION 25. 6.86 (3) (c) of the statutes is amended to read:

6.86 (3) (c) An application under par. (a) 1. may be made and a registration form under par. (a) 2. may be filed in person at the office of the municipal clerk not earlier than 7 days before an election and not later than 5 p.m. on the day of the election. A list of hospitalized electors applying for ballots under par. (a) 1. shall be made by the municipal clerk and used to check that the electors vote only once, and by absentee ballot. If identification is required, the municipal clerk shall so inform the agent and the elector shall enclose identification in the envelope with the ballot. The ballot shall be sealed by the elector and returned to the municipal clerk either by mail or by personal delivery of the agent; but if the ballot is returned on the day of the election, the agent shall make personal delivery at the polling place serving the hospitalized elector's residence before the closing hour for the ballot to be counted.

History: 1975 c. 85 ss. 37, 38, 65; 1975 c. 90, 199, 200, 275, 422; 1977 c. 394 ss. 14, 40, 41; 1979 c. 232, 311; 1981 c. 391; 1983 a. 183, 484; 1985 a. 304 ss. 69, 156; 1987 a. 391; 1995 a. 313; 1999 a. 182; 2001 a. 51.

SECTION 26. 6.865 (title) of the statutes is amended to read:

6.865 (title) Federal postcard request form absentee ballot requests.

History: 1989 a. 192; 1999 a. 182.

SECTION 27. 6.865 of the statutes is renumbered 6.865 (2).

SECTION 28. 6.865 (3) and (4) of the statutes are created to read:

6.865 (3) If the elector making a timely request for an absentee ballot is a military elector or an overseas elector and the elector requests that he or she be sent an absentee ballot for the next 2 general elections, the municipal clerk or board of election commissioners shall comply with the request except that no ballot shall be sent for a succeeding general election if the elector's name appeared on the registration list for a previous general election and no longer appears on the registration list for the succeeding general election. If the elector's address for the succeeding general election is in a municipality that is different from the

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municipality in which the elector resided for the first general election, the clerk or board of election commissioners shall forward the request to the clerk or board of election commissioners of the municipality where the elector resides.

(4) If the municipal clerk or board of election commissioners rejects a request for an absentee ballot from a military elector or an overseas elector, the clerk or board of election commissioners shall promptly inform the elector of the reason for the rejection.

History: 1989 a. 192; 1999 a. 182.

SECTION 29. 6.865 (1) of the statutes is created to read:

6.865 (1) In this section, "military elector" and "overseas elector" have the meaning given under s. 6.36 (2) (c).

SECTION 30. 6.869 of the statutes is created to read:

6.869 Uniform instructions. The board shall, by rule, prescribe uniform instructions for absentee voters. The instructions shall include information concerning the procedure for correcting errors in marking a ballot and obtaining a replacement for a spoiled ballot. The procedure shall, to the extent possible, respect the privacy of each elector and preserve the confidentiality of each elector's vote.

SECTION 31. 6.87 (3) (d) of the statutes is amended to read:

6.87 (3) (d) A municipal clerk of a municipality may, if the clerk is reliably informed by an absent elector of a facsimile transmission number or electronic mail address where the elector can receive an absentee ballot, transmit a facsimile or electronic copy of the absent elector's ballot to that elector in lieu of mailing under this subsection if, in the judgment of the clerk, the time required to send the ballot through the mail may not be sufficient to enable return of the ballot by the time provided under sub. (6). An elector may receive an absentee ballot under this

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subsection only if the elector has filed a valid application for the ballot under sub. (1). If the clerk transmits an absentee ballot under this paragraph, the clerk shall also transmit a facsimile or electronic copy of the text of the material that appears on the certificate envelope prescribed in sub. (2), together with instructions prescribed by the board. The instructions shall require the absent elector to make and subscribe to the certification as required under sub. (4) and to enclose the absentee ballot in a separate envelope contained within a larger envelope, that shall include the completed certificate. The elector shall then mail the absentee ballot with postage prepaid to the municipal clerk. ~~An~~ ^{S.} Except as authorized in 6.97 (2), an absentee ballot received under this paragraph shall not be counted unless it is cast in the manner prescribed in this paragraph and in accordance with the instructions provided by the board.

History: 1971 c. 242; 1971 c. 304 s. 29 (1), (2); 1975 c. 85; 1975 c. 93 s. 119 (2); 1975 c. 199; 1977 c. 394; 1979 c. 232, 260, 311, 355; 1983 a. 36, 484, 538; 1985 a. 304; 1991 a. 316; 1999 a. 49, 182; 2001 a. 16, 38, 109.

SECTION 32. 6.87 (4) of the statutes is amended to read:

6.87 (4) Except as otherwise provided in s. 6.875, the elector voting absentee shall make and subscribe to the certification before one witness. The absent elector, in the presence of the witness, shall mark the ballot in a manner that will not disclose how the elector's vote is cast. The elector shall then, still in the presence of the witness, fold the ballots if they are paper ballots so each is separate and so that the elector conceals the markings thereon and deposit them in the proper envelope. If a consolidated ballot under s. 5.655 is used, the elector shall fold the ballot if it is a paper ballot so that the elector conceals the markings thereon and deposit the ballot in the proper envelope. If the elector has registered by mail and has not, or is not certain whether the elector has previously voted in an election for national office in this state, the elector shall enclose identification in the envelope. Identification is

required if the elector is not a military elector or an overseas elector, as defined in s. 6.36 (2) (c), and the elector registered by mail and has not voted in an election for national office in this state. The elector may receive assistance under sub. (5). The return envelope shall then be sealed. The witness may not be a candidate. The envelope shall be mailed by the elector, postage prepaid, or delivered in person, to the municipal clerk issuing the ballot or ballots. Failure to return an unused ballot in a primary does not invalidate the ballot on which the elector's votes are cast. Return of more than one marked ballot in a primary or return of a ballot prepared under s. 5.655 or a ballot used with an electronic voting system in a primary which is marked for candidates of more than one party invalidates all votes cast by the elector for candidates in the primary.

History: 1971 c. 242; 1971 c. 304 s. 29 (1), (2); 1975 c. 85; 1975 c. 93 s. 119 (2); 1975 c. 199; 1977 c. 394; 1979 c. 232, 260, 311, 355; 1983 a. 36, 484, 538; 1985 a. 304; 1991 a. 316; 1999 a. 49, 182; 2001 a. 16, 38, 109.

INS 23-8:

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If the registration list indicates that identification is required and no identification is enclosed or the name or address on the document that is provided cannot be verified by the ^{inspectors} ~~officials~~, the ~~officials~~ shall proceed as provided under s. 6.97

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INS 24-23:

SECTION 33. 6.96 of the statutes is created to read:

6.96 Voting procedure for electors voting pursuant to federal court order. Whenever any elector is allowed to vote at a polling place pursuant to a federal court order after the closing time provided under s. 6.78, the inspectors shall

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give the elector a ballot. Before depositing the ballot, the inspectors shall write on the back of the ballot the serial number of the elector corresponding to the number kept at the election on the poll list, or other list maintained under 6.79. If voting machines are used in the municipality where the elector is voting, the elector's vote may be received only upon ^{delete xtra space} an absentee ballot furnished by the municipal clerk which shall have the corresponding number from the poll list or other list maintained under s. 6.79 written on the back of the ballot before the ballot is deposited. When receiving the elector's ballot, the inspectors shall provide the elector with the written voting information prescribed by the board under s. 7.08 (8). The inspectors shall indicate on the list the fact that the elector is voting pursuant to a federal court order. The ballot shall be counted under s. 5.85 or 7.51 unless the order is vacated. If the order is vacated after the ballot is counted, the appropriate board or boards of canvassers or the chairperson of the board or his or her designee shall reopen the canvass to discount any ballots that were counted pursuant to the vacated order and adjust the statements, certifications, and determinations accordingly.

SECTION 34. 6.97* of the statutes is created to read:

6.97 Voting procedure for individuals not providing required identification. (1) Whenever any individual who is required to provide identification in order to be permitted to vote appears to vote at a polling place and cannot provide the required identification or inspectors cannot verify the document submitted by the individual, the inspectors shall offer the opportunity for the individual to vote under this section. If the individual wishes to vote, the inspectors shall require the individual to execute a written affirmation before the inspectors stating that the individual is a qualified elector of the ward or election district where he or she offers to vote and is eligible to vote in the election. The inspectors shall then

give the individual a ballot. Before depositing the ballot, the inspectors shall write on the back of the ballot the serial number of the individual corresponding to the number kept at the election on the poll list or other list maintained under s. 6.79. If voting machines are used in the municipality where the individual is voting, the individual's vote may be received only upon an absentee ballot furnished by the municipal clerk which shall have the corresponding number from the poll list or other list maintained under s. 6.79 written on the back of the ballot before the ballot is deposited. When receiving the individual's ballot, the inspectors shall provide the individual with written voting information prescribed by the board under s. 7.08 (8). The inspectors shall indicate on the list the fact that the individual is required to provide identification but did not do so or the document submitted by the individual could not be verified by the inspectors. The inspectors shall notify the individual that he or she may provide identification to the municipal clerk. The inspectors shall also promptly notify the municipal clerk of the name, address and serial number of the individual. If, prior to the completion of the canvass of the election by the municipal board of canvassers, the municipal clerk notifies the board of canvassers that the individual is qualified to vote in the ward or election district where the individual's ballot was cast, the vote of the individual shall be counted. Otherwise, the vote of the individual ^{e may} ~~shall~~ not be counted. ✓

(2) Whenever any individual who votes by absentee ballot is required to provide identification in order to be permitted to vote and does not provide the required identification or the inspectors cannot verify the document submitted by the individual, the inspectors shall write on the back of the absentee ballot the serial number of the individual corresponding to the number kept at the election on the poll list or other list maintained under s. 6.79. The inspectors shall indicate on the list

the fact that the individual is required to provided identification but did not do so or the document submitted by the individual could not be verified by the inspectors. The inspectors shall promptly notify the municipal clerk of the name, address, and serial number of the individual. If, prior to completion of the canvass by the municipal board of canvassers, the municipal clerk notifies the board of canvassers that the individual is qualified to vote in the ward or election district where the individual's ballot was cast, the vote of the individual shall be counted. Otherwise, the vote of the individual shall not be counted.

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INS 25-5:

SECTION 35. 7.08 (6) and (8) of the statutes are created to read:

7.08 (6) ENFORCEMENT OF FEDERAL VOTING SYSTEM STANDARDS. Following each general election, audit the performance of each voting system used in this state to determine the error rate of the system in counting ballots that are validly cast by electors. If the error rate exceeds the rate permitted under standards of the federal election commission in effect on October 29, 2002, the board shall take remedial action and order remedial action to be taken by affected counties and municipalities to ensure compliance with the standards. Each county and municipality shall comply with any order received under this subsection.

(8) ELECTORS VOTING PURSUANT TO FEDERAL COURT ORDER. Prescribe a written notice to be distributed to electors who vote under s. 6.96 or 6.97 which informs an elector how to obtain information regarding whether his or her vote has been

that

counted, and if the vote will not be counted, the reason that the vote will not be counted.

INS 25-11:

κ

SECTION 36. 7.10 (7) and (8) of the statutes are created to read:

7.10 (7) VOTER EDUCATION. Each county clerk shall assist the board in conducting educational programs under s. 5.05 (12) to inform electors about the voting process.

(8) TOLL-FREE ELECTION INFORMATION EXCHANGE. Each county clerk shall assist the board in maintaining toll-free telephone lines and other information access systems under s. 5.05 (13) for exchange of voting information.

INS 25-23:

κ

SECTION 37. 7.15 (9) and (10) of the statutes are created to read:

7.15 (9) VOTER EDUCATION. Each municipal clerk shall assist the board in conducting educational programs under s. 5.05 (12) to inform electors about the voting process.

(10) TOLL-FREE ELECTION INFORMATION EXCHANGE. Each municipal clerk shall assist the board in maintaining toll-free telephone lines and other information access systems under s. 5.05 (13) for exchange of voting information.

INS 29-11:

?

SECTION 38. 9.01 (11) of the statutes is amended to read:

9.01 (11) **EXCLUSIVE REMEDY.** This Except as authorized in ss. 5.061 and 227.52,
this section constitutes the exclusive judicial remedy for testing the right to hold an
elective office as the result of an alleged irregularity, defect or mistake committed
during the voting or canvassing process.

History: 1971 c. 251; 1971 c. 304 s. 29 (2); 1971 c. 336; 1973 c. 313; 1973 c. 334 ss. 23 to 26, 57; 1975 c. 41, 422; 1977 c. 394 s. 53; 1977 c. 427; 1979 c. 200; 1979 c. 260
ss. 66 to 68, 93; 1979 c. 311, 355; 1983 a. 183; 1983 a. 484 p. 172 (3); 1983 a. 538; 1985 a. 304; 1987 a. 391; 1989 a. 192; 1993 a. 213; 1997 a. 27; 1999 a. 49, 182; 2001 a. 16.

SECTION 39. 10.02 (3) (a) of the statutes is amended to read:

10.02 (3) (a) Upon entering the polling place and before being permitted to vote,
an elector shall give state his or her name and address ~~before being permitted to vote~~
and provide identification if required by federal law. Where ballots are distributed
to electors, the initials of 2 inspectors must appear on the ballot. Upon being
permitted to vote, the elector shall retire alone to a voting booth or machine and cast
his or her ballot, except that an elector who is a parent or guardian may be
accompanied by the elector's minor child or minor ward. An election official may
inform the elector of the proper manner for casting a vote, but the official may not
in any manner advise or indicate a particular voting choice.

History: 1971 c. 304 s. 29 (2); 1973 c. 334 s. 57; 1975 c. 85, 199; 1977 c. 107, 427, 447; 1979 c. 311; 1981 c. 377; 1983 a. 484 ss. 419, 172 (3); 1985 a. 304; 1989 a. 31;
1997 a. 250; 1999 a. 182.

↑ the renumbering of section 5.87
of the statutes ↑

INS 33-6:

SECTION 40. Effective dates. This act takes effect on the day after publication,
except as follows:

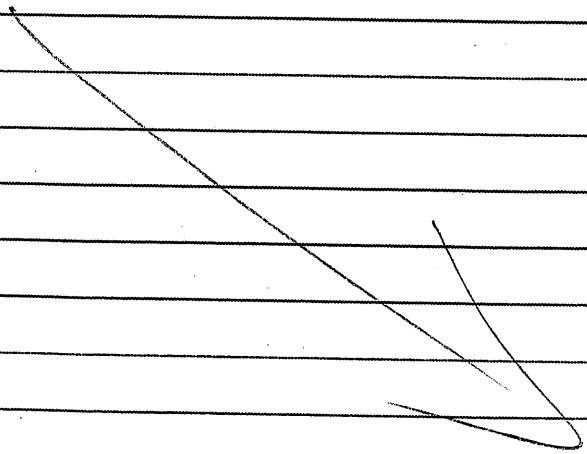
(1) The treatment of sections 5.02 (24w), 5.05 (12), 5.25 (4) (a) and (c), 5.87, 5.91
(15) to (18), 6.689, 7.08 (6), 7.10 (7) and 7.15 (9) of the statutes and the creation of
section 5.87 (2) of the statutes takes effect on January 1, 2006.

(2) The treatment of sections 5.05 (13), 5.35 (6) (a) 2m. 4., 4a., and 4b., 6.96, 7.08
(8), 7.10 (8) and 7.15 (10) of the statutes takes effect on January 1, 2004.

↑

FI SECTION ~~X~~ CR; 51.62 (3)(a) 4.

②
FI 51.62 (3)(a) 4. Engage in activities to ensure
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full participation in the electoral process for eligible electors
with mental illness or developmental disabilities,
including registering to vote, voting, and
obtaining access to polling places.



Section #. 51.62 (3m) of the statutes is amended to read:

51.62 (3m) FUNDING. From the appropriation under s. 20.435 (7) (md), the department may not distribute more than \$75,000 in each fiscal year to the protection and advocacy agency for performance of community mental health protection and advocacy services.

History: 1985 a. 29; 1987 a. 161 s. 13m; 1987 a. 399; 1989 a. 31; 1993 a. 27; 1995 a. 27, 169; 1997 a. 27, 35.

and, from the appropriation
under s. 20.435(7)(na), the
department shall distribute
funds made available
under P.L. 107-252

End of
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0610/P3dni

JTK:.....

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Kevin Kennedy:

This draft attempts to implement mandates imposed upon this state under the Help America Vote Act and to enable receipt of federal aid by this state under the Act. On balance, the burdens imposed upon this state under the Act probably outweigh the benefits gained, but in most cases the mandates stand independently of the aids, so there is relatively little to be gained by spurning the aids. Unfortunately, the Act overreaches in its breadth and detail so that it runs against the grain of state law and adds tremendous complication and confusion to state law with relatively little payoff. In many cases, we have a different way of getting at the same perceived problem and our way is arguably just as good as the federal way. Under this draft, we often end up using both ways to get at the problem, because the state law is not really supplanted or only partially so. In addition, there is a constant tension within P.L. 107-252 between two goals: enhancing electoral participation and voter rights vs. ensuring the integrity of elections, with one goal arguably undercutting the other. This tension is carried over into this draft. ✓

In preparing this draft, I had to make many judgement calls either because the federal language was inherently problematic or it was not drafted in cognizance of Wisconsin law. Many issues are unresolved. We need to review this draft to ensure that it is the most logical way to approach the issue from Wisconsin's standpoint and hopefully end up with a draft that makes the best of the situation and wins bipartisan support so that early enactment will be facilitated. Specific comments follow:

This B
autonomous → . Concerning proposed s. 5.02 (6m), which defines the types of identification that individuals other than military and overseas electors who register by mail and have not voted in a federal election in this state must provide before voting in their first federal election, this draft mirrors sec. 303 (b) (2) (A) of P.L. 107-252. Under this law, any piece of identification containing a photograph is acceptable. This will readily allow fraudulent pieces of identification to be used. I think the type of identification that we are looking for is an ID card issued by a governmental unit or some type of government-certified private entity so that we can rely upon the authenticity of the ID.

→ . Proposed s. 5.061 implements sec. 402 (1) (2) of P.L. 107-252, which requires this state to set up an administrative procedure for handling complaints relating to violations of Title III of P.L. 107-252. This section raises several issues:

a. This state is supposed to resolve each complaint within 89 days (including the day the complaint is received) unless the complainant or complainants agree to extend this period. Under this draft, the decision of the board with respect to a complaint is appealable through at least two and possibly three levels of state courts and potentially in federal court. Consequently, there is no way that there can be a final resolution within 89 days. It's possible that appellants may not want to raise this issue, so I'm not sure what practical effect it will have.

b. Section 402 (a) (2) (I) of P.L. 107-252 provides that if this state misses the deadline for final resolution, "...the complaint shall be resolved under alternative dispute resolution procedures established for purposes of this section." The act does not say who would establish these procedures and who would resolve the dispute.

c. Even if we resolve the dispute within 89 days, in many cases that will be long after an election has been held and the winner has been certified, so there will be no effective remedy in many cases, unless the alleged violation was of such magnitude that it could have changed the election result. Because, it seems, the draft necessarily envisions overturning an election result in some cases, the draft provides for canvasses to be reopened and certificates of election to be withdrawn and reissued. However, since we are talking about federal elections exclusively here, we must remember that congress will be the final arbiter, and it's speculative whether any redetermination by this state would have any effect upon its decision.

. Concerning polling place accessibility:

a. In its treatment of s. 5.25 (4) (a), stats., relating to polling place accessibility and voting system design, this draft assumes, despite the language of federal law, that the focus of sec. 301 (3) of P.L. 107-252 is to address the needs of *physically* disabled individuals. If all mentally disabled individuals are to be guaranteed the right to vote to the same extent as nondisabled individuals, we would need to repeal s. 6.03 (1) (a), stats., which disqualifies from voting individuals who are under guardianship or who are adjudged to be incapable of understanding the objective of the elective process. Secondly, the breadth of this provision is obviously troublesome in that it guarantees that equipment be made available at *every* polling place sufficient to accommodate the needs of *every* potential elector with any conceivable disability, including, for example, an individual who suffers from complete physical paralysis. I think the intent was probably to cover visually impaired people, but the language sweeps far beyond that group.

b. Is there any reason to retain s. 6.82 (1), stats., which provides for receipt of ballots at polling place entrances for electors who as a result of physical disability are unable to enter polling places, if all polling places are to be accessible?

. Concerning proposed s. 5.87 (2), relating to uniform standards for the counting of votes cast or attempted to be cast with electronic voting systems, my assumption is that the standards under s. 7.50, stats., address the recurrent situations where the canvassers need to determine intent in jurisdictions where paper ballots are used. These standards may also apply in some situations where electronic voting systems are used. This draft, therefore, directs the board to fill in the gaps by prescribing standards

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for determining the validity of votes cast with electronic voting systems where s. 7.50, stats. does not address the issue that arises. If I am incorrect in assuming that s. 7.50, stats. addresses all the recurrent issues that arise in the counting of paper ballots, we need to change this draft. ✓

. With respect to the standards for electronic voting equipment under § 5.91, stats., I did not include in this draft any corresponding standards for mechanical voting machines based upon the assumption that we will shortly be discontinuing the use of these machines. If this does not turn out to be the case, we will need to insert standards for these machines in the draft. ✓

. Concerning proposed s. 5.91 (18), which creates a new standard that requires electronic voting machines to produce a permanent paper record of each vote cast, what should be done with the permanent paper record of the votes cast with an electronic voting machine? Should the canvassing or recount laws be changed to require the record to be utilized in some way during the canvassing or recount process, or should the record merely be available for reference in case of a catastrophic failure? If so, nothing much has changed because this replicates the existing standard under s. 5.91 (11), stats. If the record is required to be produced and no use for the record is suggested, variations between jurisdictions may develop with regard to the use, if any, to be made of this record. ✓

. For purposes of the treatment s. 6.36, stats. (the statewide computerized voter registration list): ✓

a. I assume that the requirement of sec. 303 (a) (1) (A) (iii) of P.L. 107-252 for a "unique identifier" for each elector means the operator's license number, the last 4 digits of the social security number, or the registration identification number issued by the board under proposed s. 6.285 (1). Because the last 4 digits of social security numbers will undoubtedly be duplicated in some cases, this draft provides in proposed s. 6.285 (2) for the board to assign supplemental identifying numerals or characters to an elector who uses the last 4 digits of a social security number so that the elector's number will be unique. ✓

b. The requirement of sec. 303 (a) (1) (A) (iv) for the list to be "coordinated with other agency data bases within the state" is not reflected in this draft, except where the law is specific about certain kinds of coordination, such as coordination with DOT. This provision is too vague to implement without further instructions. It should also be noted that some of these data bases, such as health records, are confidential under state or federal law. ✓

c. The requirement under sec. 303 (a) (1) (A) (v) for any state or local election official to be provided with immediate electronic access to the information contained in the statewide registration list conflicts with s. 6.36 (2) (b), stats, which makes certain registration addresses confidential except to municipal clerks and their deputies. To my mind, given the federal language, there seems to be no way around making the address information available to all poll workers, which the legislature felt would compromise confidentiality. This move would also necessitate having two versions of the registration list— one for use by poll workers and the other for public access and

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inspection. This would in turn complicate canvasses and recounts, the records of which are completely open presently. As a result of these complications, the draft does not conform to the federal mandate on this point so that you can first reflect on this issue. Please let me know if you want to do something more about this. ✓

d. Section 303 (a) (2) (A) contains some specific procedures for removal of the names of voters from the statewide registration list, but provides that in the case of states described in 42 USC 1973gg-2 (b) [the National Voter Registration Act], the state shall remove the names of voters from the list in accordance with state law. Once again, although I don't think this exemption actually applies to Wisconsin, on the presumption that the exemption was intended to apply to this state, I have not picked up the federal purging requirements in this draft. Please let me know if this is not in accord with your intent. In addition, sec. 303 (a) (4) contains other requirements for maintenance of the registration list and further provides that states must "...adopt safeguards to ensure that eligible voters are not removed in error from the...list...". Unlike sec. 303 (a) (2) (A), this provision clearly applies to this state. My reading of it is that s. 6.50 (1) and (2), stats., would probably satisfy the maintenance requirements, but s. 6.50 (2m), stats., which permits a "positive purge" procedure, would not. Therefore, this draft repeals s. 6.50 (2m), stats. This draft does not reflect the mandate for safeguards because this is pretty vague, and it can probably be handled administratively by adopting and implementing sound management controls. ✓

e. In sec. 303 (b) (3) (c) (i) of P.L. 107-252, there is an exemption from the voting identification requirement for military and overseas electors, as defined by federal law [42 USC 1973ff-6 (1) and (5)]. Unfortunately, our corresponding definitions in state law [ss. 6.22 (1) (b) and 6.24 (1)] are broader. Therefore, some individuals who vote as military or overseas electors will not be entitled to the exemption. Also, some of the individuals who are "military electors" under state law are treated as "overseas electors" under federal law. Therefore, in proposed s. ~~6.22~~ (2) (c), I have used the narrower federal definitions. This distinction will probably create a headache for board staff and municipal clerks because they will need to tag the registration list with an indication of whether identification must be requested of an elector before the elector is permitted to vote. *parenthetically, a similar nuisance is created* ✓

stats.

by the treatment of s. 6.22(2)(c), stats., relating to absentee ball of request and by proposed s. 6.276, which requires reports on absentee voting, because the same definitional problem occurs there too. ✓

f. Currently, s. 6.22 (3), stats., exempts all military electors (as defined by state law) from registration requirements. Most of these electors presumably will not register. However, if they were registered before becoming military electors, under sec. 303 (b) (3) (c) (i) of P.L. 107-252 some, but not all, of these electors must be asked for identification before they are permitted to vote. Because the names of overseas electors will be on the registration list for federal elections, it might be easier to have the names of military electors on the registration list. Otherwise, we would need to keep a separate list of some of these names, which will beleaguer the board staff, the municipal clerks, and the inspectors. If it wouldn't cause too much confusion to keep the military electors exempt, however, I think there would be political support for the exemption.

g. In sec. 303 (b) (3) (c) (ii) of P.L. 107-252, there is an exemption from the voting identification requirement for elderly and handicapped voters who are provided with

an alternative means of voting so that they are not required to use an inaccessible polling place. Because P.L. 107-252 requires all polling places to be accessible, I'm not sure this category of voters will actually continue to exist. If we were to try to give effect to something along this line, it seems to me that we would have to exempt all elderly and handicapped absentee voters from the requirement and that would be administratively difficult and would also perhaps raise equal protection issues. This draft, therefore, does not reflect this exemption.

h. Although sec. 303 (b) of P.L. 107-252 (the voting identification requirement for mail-in registrants) applies to individuals as of January 1, 2003, and to states as of January 1, 2004, since the requirement cannot be made retroactive and since no federal elections are scheduled to be held in this state in 2003, I am not perceiving much practical impact of this distinction. The draft, therefore, implements these provisions without a specific delayed effective date.

i. Section 303 (b) (4) of P.L. 107-252, which requires specific language to appear on voter registration forms, is not reflected in this draft because by its terms it does not affect states that are exempt from compliance with with 42 USC 1973gg et seq. [the National Voter Registration Act] and, once again, I am assuming that that Act was not intended to apply to this state.

. In s. 6.865, stats., which implements sec. 704 of P.L. 107-252, we are required to automatically send absentee ballots upon request to uniformed service and overseas voters (as defined by federal law) for the next ~~two~~ general elections. I have left open the question of what should be done if the voters want absentee ballots for state and local elections during the interval between these general elections. One reason is because, under this provision, the request carries over from municipality to municipality as long as the elector remains registered somewhere in this state. Also, because some of these voters are not on the registration list (see above comment), it may be difficult to keep track of them.

. In proposed s. 6.96, I did not make provision for the marking of ballots issued pursuant to a state court order for extended polling hours because there is no statutory authority for such an order to be issued. If you want to require marked ballots for voting conducted under a state court order, I would first address the issue of who would be permitted to issue such an order and under what circumstances. Because it is fairly easy to fund a friendly circuit judge in some areas and because there is a potential for improper influence when a court acts without a full adversarial hearing, I would approach this issue with some caution. This is not to indicate that there aren't a few extreme situations where extended hours might be justifiable.

. Proposed s. 6.97 implements the requirement in sec. 303 (b) (2) (B) of P.L. 107-252 for individuals attempting to vote who are required to provide identification but who fail to provide acceptable identification to be allowed to vote provisionally. Although federal law is a little vague on how this is to be handled, I tried to give the law some effect without delaying the municipal or later canvasses and requiring the canvasses to be reopened. Federal law requires the appropriate state or local election official to promptly determine whether the individual is qualified to vote. The draft provides that if the individual appears at the polling place, the inspectors shall inform the individual

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that he or she may provide identification to the clerk. It does not specify whether a fax or E-mail attachment would be sufficient. In any case, the draft provides that the inspectors shall immediately notify the municipal clerk if they mark a ballot due to missing or insufficient identification. The draft also provides that the clerk shall determine whether the individual is qualified to vote, and if the municipal board of canvassers is informed by the clerk prior to completion of the canvass, that the individual is qualified to vote, the board of canvassers shall count the vote. Otherwise, the vote is not counted. Obviously, there is little time for the clerk to undertake an investigation and the draft does not specify to what extent the clerk should go to undertake this investigation and what type of verification is sufficient. For example, if the clerk finds a listed phone number for the individual at an address in the correct ward and finds that the number has not been disconnected, is that enough? If there is no number, what more should the clerk do to attempt verification? If different clerks react differently, may an election result be challenged on this basis? Please let me know if you want to amplify on this treatment.

→ Proposed s. 7.08 (6), which applies sec. 301 (5) of P.L. 107-252, directs the board to audit each voting system, as defined by federal law, that is used in this state following each general election. Federal law does not specify any audit interval; continuous compliance is required. The draft language is based on the notion that since federal elections generally occur biennially, it would seem that to apply this requirement in good faith, there should be some effort made to detect and remedy problems in one federal election before the next federal election is held, but, at the same time, if the problem is remedied by the time of the next regular federal election, that is soon enough. Please let me know if you want to see a different treatment of this issue.

→ Proposed s. 51.62 (3) (a) 4. is based upon sec. 291 (a) of P.L. 107-252. The federal provision requires the state protection and advocacy system to ensure full participation in the electoral process for individuals with disabilities. Under federal law, the protection and advocacy system serves individuals with developmental disabilities and mental illness. Because under s. 6.03 (1) (a), stats., a significant number of these individuals are not eligible to vote in this state, this draft directs the state protection and advocacy agency to ensure full participation in the electoral process for *eligible electors*.

→ I have not included the provisional voting mandate under sec. 302 of P.L. 107-252 in this draft for two reasons: 1) Because under s. 6.55 (3), stats., the vote of an unregistered elector who can verify his or her residence is always counted unless successfully challenged, sec. 302 would seem to require a more restrictive treatment than we now have; 2) The unnumbered paragraph following sec. 302 (5) (B), which exempts states described in 42 USC 1973gg-2 (b) [the National Voter Registration Act] appears to be intended to exempt Wisconsin from compliance with sec. 302. However, the NVRA provision only exempts states that a) since August 1, 1994 have not required registration for any voter in the state with respect to an election for federal office; or b) since May 20, 1993 have permitted all voters in the state to register to vote in the polling place at the time of voting in an election for federal office. If you wish, we could set up a provisional voting procedure for those electors who arrive at the polls without acceptable proof of residence; however, this would complicate polling place and

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canvassing proceedings to attend to the needs of a relatively small number of electors who could in most cases produce some proof with relatively little diligence. If you believe that this approach to provisional voting will not be acceptable to the federal government or that we should try to deal with the electors who cannot verify their residences, we will need to address the provisional voting issue in this draft. ✓

→ . Section 302 (b) (2) (C) and (E) of P.L. 107-252 requires the posting in polling places of instructions concerning provisional voting rights and the procedure for casting a provisional ballot. Although there is no exemption provided from this requirement, since provisional voting is not treated in this draft (except in modified form when voting is conducted after hours pursuant to a federal court order and a separate individual notice is distributed), the draft does not address this posting mandate. ✓

auto number

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0610/P2dn
JTK:cjs:jf

P3dn

November 11, 2002

RSB

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~~Kevin Kennedy~~

This draft appropriates from general purpose revenue the minimum amount required to enable this state to receive federal financial assistance under P.L. 107-252. The draft also creates a sum certain appropriation account derived from general purpose revenue to be used for the same purpose [proposed s. 20.510 (1) (v)]. This appropriation can be used to meet federal mandates under P.L. 107-252 if federal assistance is insufficient or is not provided soon enough to meet these mandates by the deadline for compliance (2004). However, the draft does not appropriate any money under this appropriation. When it is known whether this money will be needed and, if so, how much will be needed, the appropriate amounts can be inserted by redraft or amendment. In addition, if it becomes necessary to provide more state money to comply with these mandates after enactment of this bill, this appropriation can also be used for that purpose.

~~Jeffery T. Kuesel~~
~~Managing Attorney~~

Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0610/P3dn
JTK:cs:eph

November 26, 2002

Kevin Kennedy:

This draft attempts to implement mandates imposed upon this state under the Help America Vote Act and to enable receipt of federal aid by this state under the Act. On balance, the burdens imposed upon this state under the Act probably outweigh the benefits gained, but in most cases the mandates stand independently of the aids, so there is relatively little to be gained by spurning the aids. Unfortunately, the Act overreaches in its breadth and detail so that it runs against the grain of state law and adds tremendous complication and confusion to state law with relatively little payoff. In many cases, we have a different way of getting at the same perceived problem and our way is arguably just as good as the federal way. Under this draft, we often end up using both ways to get at the problem, because the state law is not really supplanted or only partially so. In addition, there is a constant tension within P.L. 107-252 between two goals: enhancing electoral participation and voter rights vs. ensuring the integrity of elections, with one goal arguably undercutting the other. This tension is carried over into this draft.

In preparing this draft, I had to make many judgement calls either because the federal language was inherently problematic or it was not drafted in cognizance of Wisconsin law. Many issues are unresolved. We need to review this draft to ensure that it is the most logical way to approach the issue from Wisconsin's standpoint and hopefully end up with a draft that makes the best of the situation and wins bipartisan support so that early enactment will be facilitated. Specific comments follow:

1. This draft appropriates from general purpose revenue the minimum amount required to enable this state to receive federal financial assistance under P.L. 107-252. The draft also creates a sum certain appropriation account derived from general purpose revenue to be used for the same purpose [proposed s. 20.510 (1) (v)]. This appropriation can be used to meet federal mandates under P.L. 107-252 if federal assistance is insufficient or is not provided soon enough to meet these mandates by the deadline for compliance (2004). However, the draft does not appropriate any money under this appropriation. When it is known whether this money will be needed and, if so, how much will be needed, the appropriate amounts can be inserted by redraft or amendment. In addition, if it becomes necessary to provide more state money to comply with these mandates after enactment of this bill, this appropriation can also be used for that purpose.

2. Concerning proposed s. 5.02 (6m), which defines the types of identification that individuals other than military and overseas electors who register by mail and have not voted in a federal election in this state must provide before voting in their first federal election, this draft mirrors sec. 303 (b) (2) (A) of P.L. 107-252. Under this law, *any* piece of identification containing a photograph is acceptable. This will readily allow fraudulent pieces of identification to be used. I think the type of identification that we are looking for is an ID card issued by a governmental unit or some type of government-certified private entity so that we can rely upon the authenticity of the ID.

3. Proposed s. 5.061 implements sec. 402 (1) (2) of P.L. 107-252, which requires this state to set up an administrative procedure for handling complaints relating to violations of Title III of P.L. 107-252. This section raises several issues:

a. This state is supposed to resolve each complaint within 89 days (including the day the complaint is received) unless the complainant or complainants agree to extend this period. Under this draft, the decision of the board with respect to a complaint is appealable through at least two and possibly three levels of state courts and potentially in federal court. Consequently, there is no way that there can be a final resolution within 89 days. It's possible that appellants may not want to raise this issue, so I'm not sure what practical effect it will have.

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4. Concerning polling place accessibility:

a. In its treatment of s. 5.25 (4) (a), stats., relating to polling place accessibility and voting system design, this draft assumes, despite the language of federal law, that the focus of sec. 301 (3) of P.L. 107-252 is to address the needs of *physically* disabled individuals. If all mentally disabled individuals are to be guaranteed the right to vote to the same extent as nondisabled individuals, we would need to repeal s. 6.03 (1) (a), stats., which disqualifies from voting individuals who are under guardianship or who are adjudged to be incapable of understanding the objective of the elective process. Secondly, the breadth of this provision is obviously troublesome in that it guarantees that equipment be made available at *every* polling place sufficient to accommodate the needs of *every* potential elector with any conceivable disability, including, for example,

an individual who suffers from complete physical paralysis. I think the intent was probably to cover visually impaired people, but the language sweeps far beyond that group.

b. Is there any reason to retain s. 6.82 (1), stats., which provides for receipt of ballots at polling place entrances for electors who as a result of physical disability are unable to enter polling places, if all polling places are to be accessible?

5. Concerning proposed s. 5.87 (2), relating to uniform standards for the counting of votes cast or attempted to be cast with electronic voting systems, my assumption is that the standards under s. 7.50, stats., address the recurrent situations where the canvassers need to determine intent in jurisdictions where paper ballots are used. These standards may also apply in some situations where electronic voting systems are used. This draft, therefore, directs the board to fill in the gaps by prescribing standards for determining the validity of votes cast with electronic voting systems where s. 7.50, stats., does not address the issue that arises. If I am incorrect in assuming that s. 7.50, stats., addresses all the recurrent issues that arise in the counting of paper ballots, we need to change this draft.

6. With respect to the standards for electronic voting equipment under s. 5.91, stats., I did not include in this draft any corresponding standards for mechanical voting machines based upon the assumption that we will shortly be discontinuing the use of these machines. If this does not turn out to be the case, we will need to insert standards for these machines in the draft.

7. Concerning proposed s. 5.91 (18), which creates a new standard that requires electronic voting machines to produce a permanent paper record of each vote cast, what should be done with the permanent paper record of the votes cast with an electronic voting machine? Should the canvassing or recount laws be changed to require the record to be utilized in some way during the canvassing or recount process, or should the record merely be available for reference in case of a catastrophic failure? If so, nothing much has changed because this replicates the existing standard under s. 5.91 (11), stats. If the record is required to be produced and no use for the record is suggested, variations between jurisdictions may develop with regard to the use, if any, to be made of this record.

8. For purposes of the treatment s. 6.36, stats. (the statewide computerized voter registration list):

a. I assume that the requirement of sec. 303 (a) (1) (A) (iii) of P.L. 107-252 for a "unique identifier" for each elector means the operator's license number, the last 4 digits of the social security number, or the registration identification number issued by the board under proposed s. 6.285 (1). Because the last 4 digits of social security numbers will undoubtedly be duplicated in some cases, this draft provides in proposed s. 6.285 (2) for the board to assign supplemental identifying numerals or characters to an elector who uses the last 4 digits of a social security number so that the elector's number will be unique.

b. The requirement of sec. 303 (a) (1) (A) (iv) for the list to be "coordinated with other agency data bases within the state" is not reflected in this draft, except where the law

is specific about certain kinds of coordination, such as coordination with DOT. This provision is too vague to implement without further instructions. It should also be noted that some of these data bases, such as health records, are confidential under state or federal law.

c. The requirement under sec. 303 (a) (1) (A) (v) for any state or local election official to be provided with immediate electronic access to the information contained in the statewide registration list conflicts with s. 6.36 (2) (b), stats, which makes certain registration addresses confidential except to municipal clerks and their deputies. To my mind, given the federal language, there seems to be no way around making the address information available to all poll workers, which the legislature felt would compromise confidentiality. This move would also necessitate having two versions of the registration list — one for use by poll workers and the other for public access and inspection. This would in turn complicate canvasses and recounts, the records of which are completely open presently. As a result of these complications, the draft does not conform to the federal mandate on this point so that you can first reflect on this issue. Please let me know if you want to do something more about this.

d. Section 303 (a) (2) (A) contains some specific procedures for removal of the names of voters from the statewide registration list, but provides that in the case of states described in 42 USC 1973gg-2 (b) [the National Voter Registration Act], the state shall remove the names of voters from the list in accordance with state law. Once again, although I don't think this exemption actually applies to Wisconsin, on the presumption that the exemption was intended to apply to this state, I have not picked up the federal purging requirements in this draft. Please let me know if this is not in accord with your intent. In addition, sec. 303 (a) (4) contains other requirements for maintenance of the registration list and further provides that states must "...adopt safeguards to ensure that eligible voters are not removed in error from the...list...." Unlike sec. 303 (a) (2) (A), this provision clearly applies to this state. My reading of it is that s. 6.50 (1) and (2), stats., would probably satisfy the maintenance requirements, but s. 6.50 (2m), stats., which permits a "positive purge" procedure, would not. Therefore, this draft repeals s. 6.50 (2m), stats. This draft does not reflect the mandate for safeguards because this is pretty vague, and it can probably be handled administratively by adopting and implementing sound management controls.

e. In sec. 303 (b) (3) (c) (i) of P.L. 107-252, there is an exemption from the voting identification requirement for military and overseas electors, *as defined by federal law* [42 USC 1973ff-6 (1) and (5)]. Unfortunately, our corresponding definitions in state law [ss. 6.22 (1) (b) and 6.24 (1), stats.] are broader. Therefore, some individuals who vote as military or overseas electors will not be entitled to the exemption. Also, some of the individuals who are "military electors" under state law are treated as "overseas electors" under federal law. Therefore, in proposed s. 6.36 (2) (c), I have used the narrower federal definitions. This distinction will probably create a headache for board staff and municipal clerks because they will need to tag the registration list with an indication of whether identification must be requested of an elector before the elector is permitted to vote. Parenthetically, a similar nuisance is created by the treatment of s. 6.865, stats., relating to absentee ballot requests and by proposed s.

6.276, which requires reports on absentee voting, because the same definitional problem occurs there too.

f. Currently, s. 6.22 (3), stats., exempts all military electors (as defined by state law) from registration requirements. Most of these electors presumably will not register. However, if they were registered before becoming military electors, under sec. 303 (b) (3) (c) (i) of P.L. 107-252 some, but not all, of these electors must be asked for identification before they are permitted to vote. Because the names of overseas electors will be on the registration list for federal elections, it might be easier to have the names of military electors on the registration list. Otherwise, we would need to keep a separate list of some of these names, which will beleaguer the board staff, the municipal clerks, and the inspectors. If it wouldn't cause too much confusion to keep the military electors exempt, however, I think there would be political support for the exemption.

g. In sec. 303 (b) (3) (c) (ii) of P.L. 107-252, there is an exemption from the voting identification requirement for elderly and handicapped voters who are provided with an alternative means of voting so that they are not required to use an inaccessible polling place. Because P.L. 107-252 requires all polling places to be accessible, I'm not sure this category of voters will actually continue to exist. If we were to try to give effect to something along this line, it seems to me that we would have to exempt all elderly and handicapped absentee voters from the requirement and that would be administratively difficult and would also perhaps raise equal protection issues. This draft, therefore, does not reflect this exemption.

h. Although sec. 303 (b) of P.L. 107-252 (the voting identification requirement for mail-in registrants) applies to individuals as of January 1, 2003, and to states as of January 1, 2004, since the requirement cannot be made retroactive and since no federal elections are scheduled to be held in this state in 2003, I am not perceiving much practical impact of this distinction. The draft, therefore, implements these provisions without a specific delayed effective date.

i. Section 303 (b) (4) of P.L. 107-252, which requires specific language to appear on voter registration forms, is not reflected in this draft because by its terms it does not affect states that are exempt from compliance with with 42 USC 1973gg et seq. [the National Voter Registration Act], and once again, I am assuming that that Act was not intended to apply to this state.

9. In s. 6.865, stats., which implements sec. 704 of P.L. 107-252, we are required to automatically send absentee ballots upon request to uniformed service and overseas voters (as defined by federal law) for the *next 2* general elections. I have left open the question what should be done if the voters want absentee ballots for state and local elections during the interval between these general elections. One reason is that, under this provision, the request carries over from municipality to municipality as long as the elector remains registered somewhere in this state. Also, because some of these voters are not on the registration list (see above comment), it may be difficult to keep track of them.

10. In proposed s. 6.96, I did not make provision for the marking of ballots issued pursuant to a state court order for extended polling hours because there is no statutory

authority for such an order to be issued. If you want to require marked ballots for voting conducted under a state court order, I would first address the issue of who would be permitted to issue such an order and under what circumstances. Because it is fairly easy to find a friendly circuit judge in some areas and because there is a potential for improper influence when a court acts without a full adversarial hearing, I would approach this issue with some caution. This is not to indicate that there aren't a few extreme situations where extended hours might be justifiable.

11. Proposed s. 6.97 implements the requirement in sec. 303 (b) (2) (B) of P.L. 107-252 for individuals attempting to vote who are required to provide identification but who fail to provide acceptable identification to be allowed to vote provisionally. Although federal law is a little vague on how this is to be handled, I tried to give the law some effect without delaying the municipal or later canvasses and requiring the canvasses to be reopened. Federal law requires the appropriate state or local election official to promptly determine whether the individual is qualified to vote. The draft provides that if the individual appears at the polling place, the inspectors shall inform the individual that he or she may provide identification to the clerk. It does not specify whether a fax or E-mail attachment would be sufficient. In any case, the draft provides that the inspectors shall immediately notify the municipal clerk if they mark a ballot due to missing or insufficient identification. The draft also provides that the clerk shall determine whether the individual is qualified to vote and, if the municipal board of canvassers is informed by the clerk, prior to completion of the canvass, that the individual is qualified to vote, the board of canvassers shall count the vote. Otherwise, the vote is not counted. Obviously, there is little time for the clerk to undertake an investigation and the draft does not specify to what extent the clerk should go to undertake this investigation and what type of verification is sufficient. For example, if the clerk finds a listed phone number for the individual at an address in the correct ward and finds that the number has not been disconnected, is that enough? If there is no number, what more should the clerk do to attempt verification? If different clerks react differently, may an election result be challenged on this basis? Please let me know if you want to amplify on this treatment.

12. Proposed s. 7.08 (6), which applies sec. 301 (5) of P.L. 107-252, directs the board to audit each voting system, as defined by federal law, that is used in this state following each general election. Federal law does not specify any audit interval; continuous compliance is required. The draft language is based on the notion that since federal elections generally occur biennially, it would seem that to apply this requirement in good faith, there should be some effort made to detect and remedy problems in one federal election before the next federal election is held, but, at the same time, if the problem is remedied by the time of the next regular federal election, that is soon enough. Please let me know if you want to see a different treatment of this issue.

13. Proposed s. 51.62 (3) (a) 4. is based upon sec. 291 (a) of P.L. 107-252. The federal provision requires the state protection and advocacy system to ensure full participation in the electoral process for individuals with disabilities. Under federal law, the protection and advocacy system serves individuals with developmental disabilities and mental illness. Because under s. 6.03 (1) (a), stats., a significant number of these individuals are not eligible to vote in this state, this draft directs the

state protection and advocacy agency to ensure full participation in the electoral process for *eligible electors*.

14. I have not included the provisional voting mandate under sec. 302 of P.L. 107-252 in this draft for two reasons: 1) Because under s. 6.55 (3), stats., the vote of an unregistered elector who can verify his or her residence is always counted unless successfully challenged, sec. 302 would seem to require a more restrictive treatment than we now have; 2) The unnumbered paragraph following sec. 302 (5) (B), which exempts states described in 42 USC 1973gg-2 (b) [the National Voter Registration Act] appears to be intended to exempt Wisconsin from compliance with sec. 302. However, the NVRA provision only exempts states that a) since August 1, 1994 have not required registration *for any voter in the state* with respect to an election for federal office; or b) since May 20, 1993 have permitted *all voters in the state* to register to vote in the polling place at the time of voting in an election for federal office. If you wish, we could set up a provisional voting procedure for those electors who arrive at the polls without acceptable proof of residence; however, this would complicate polling place and canvassing proceedings to attend to the needs of a relatively small number of electors who could in most cases produce some proof with relatively little diligence. If you believe that this approach to provisional voting will not be acceptable to the federal government or that we should try to deal with the electors who cannot verify their residences, we will need to address the provisional voting issue in this draft.

15. Section 302 (b) (2) (C) and (E) of P.L. 107-252 requires the posting in polling places of instructions concerning provisional voting rights and the procedure for casting a provisional ballot. Although there is no exemption provided from this requirement, since provisional voting is not treated in this draft (except in modified form when voting is conducted after hours pursuant to a federal court order and a separate individual notice is distributed), the draft does not address this posting mandate.

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